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## **REPORT No. 01/13**

### **CASE 12.693**

MARÍA NINA LUPE DEL ROSARIO ANDRADE SALMÓN

BOLIVIA

Approved by the Commission at its session No. 1936 held on March 18, 2013  
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MERITS

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**I. SUMMARY**

1. On April 2, 2001, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition that Coty Krsul Andrade<sup>1</sup> (hereinafter also “the petitioners”) filed on behalf of Ms. María Nina Lupe del Rosario Andrade Salmón (hereinafter also “the alleged victim” or “Ms. Andrade”) in which they alleged that the Plurinational State of Bolivia (hereinafter also “Bolivia,” “the State” or “the Bolivian State”) violated the rights recognized in articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to have one’s honor respected and dignity recognized), 21 (right to private property), 22 (freedom of movement and residence), and 25 (right to judicial protection) of American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”), read in conjunction with Article 1(1) (obligation to respect and guarantee rights) and Article 2 (duty to adopt domestic legislative measures) thereof.

2. The petitioners argued that Ms. Andrade was unlawfully detained for a period of six months and seven days, in the context of six criminal cases being prosecuted against her for acts that Ms. Andrade was alleged to have committed during the time she was serving as the Mayor of La Paz. The petitioners alleged that those proceedings not only failed to produce any evidence of her participation in the crimes alleged but also were protracted by unwarranted delays in rendering the court’s decision. They also pointed out that her unlawful prosecution was the result of biased court rulings following proceedings in which both the prosecutors and the examining judges had allegedly waged a campaign to smear her good name because of political reasons.

3. On March 19, 2009, the IACHR declared the petition admissible in its Report No. 11/09, in relation to the rights recognized in articles 7, 8, 21, 22 and 25 of the American Convention, read in conjunction with the obligations established in articles 1(1) and 2 thereof, and declared the petition inadmissible with respect to the rights recognized in articles 5 and 11 of the American Convention.

4. In the merits phase, the petitioners are alleging that by ignoring the prerequisites for pre-trial detention established in Bolivia’s Code of Criminal Procedure and by disregarding the Constitutional Court’s rulings declaring that Ms. Andrade’s incarceration was unlawful, the State violated articles 7(2), 7(3) and 7(6) of the American Convention and Article 25 thereof. They are also alleging that the State violated Article 8(1) of the American Convention by bringing 6 criminal cases against Ms. Andrade, by assigning some of these cases to specific judges, in violation of Bolivian law, by allowing some of the cases to languish for years in the investigative phase, and by delaying a decision in some of the cases for more than 9 years. They also point out that the State violated Article 21 of the American Convention by virtue of the fact that on the basis of these criminal cases, it had frozen Ms. Andrade Salmón’s bank accounts and ordered her to pay unreasonable bail. With regard to Article 22 of the American Convention, the petitioners allege that by ordering her not to leave the court’s jurisdiction and prohibiting her from any travel beyond the perimeter of La Paz, the State had violated her right to freedom of movement.

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<sup>1</sup> On June 24, 2002, a brief written by Ms. Andrade was received in which she grants power of attorney to Mr. John Slater, Mr. John Lee and Northwestern University’s Center for International Human Rights to represent her in her case with the Commission.

5. The State, for its part, argued that the facts under review in the present case have to do with public functions that Ms. Andrade Salmón performed as President of the City Council of La Paz and as Mayor in the executive branch of the Government of La Paz, between January 1996 and June 1999. The State's contention was that Ms. Andrade was prosecuted with other people for the alleged commission of criminal acts relating to the alleged mismanagement of the Bolivian people's funds. The State asserted that by availing herself of the remedies under Bolivian domestic law, such as the petition of *habeas corpus*, Ms. Andrade's right to physical freedom had been protected; hence, the State did not violate articles 7 and 25 of the American Convention. The State also alleged that thanks to the good offices of the Inter-American Commission acting under Article 48(f) of the American Convention, Ms. Andrade received compensation for any damages and harm that may have been caused during the *habeas corpus* proceedings, as the State went through with the negotiations to arrange compensatory damages for Ms. Andrade Salmón. The State alleged that the judicial guarantees protected under Article 8(1) of the American Convention have in no way been violated, since the 6 criminal cases were prosecuted in connection with different facts; they were complex cases because of the number of defendants (21), and because the defendants –including the alleged victim– engaged in delaying tactics.

6. As for the alleged violation of Article 21, the State argued that bail is mainly intended to guarantee that the accused will not attempt to elude justice; hence, this allegation does not constitute a factual basis for inferring possible violations of the right to private property. In the case of the alleged violation of Article 22 of the American Convention, the State observed that a court order not to leave a jurisdiction is a means to protect the criminal process and has nothing to do with the guilt of the accused or with the imposition of a criminal sentence. It also argued that the precautionary measure involving an order not to leave the court's jurisdiction can be lifted if the interested party shows that said course of action is essential in order to protect other basic rights, such as the right to work. Finally, the State argued that there are no grounds to allege a violation of the right to freedom of movement and residence, nor can a failure to provide suitable and effective remedies to exercise this right be shown.

7. After examining the positions of the parties, the Inter-American Commission concludes that in the Gader and Street Lamps cases, the State of Bolivia is responsible for violation of Ms. María Nina Lupe del Rosario Andrade Salmón's right to personal liberty, protected under articles 7(1), 7(2) and 7(3) of the American Convention, read in conjunction with articles 8(2) and 1(1) thereof; and violation of the right to a simple and effective remedy for the protection of her basic rights, recognized in articles 7(6) and 25 of the American Convention, read in conjunction with Article 1(1) thereof, in the Gader criminal case. The Commission also concludes that in the Gader and Street Lamps cases the State of Bolivia violated Article 7(5) of the American Convention, read in conjunction with articles 1(1), 21 and 22 thereof, to the detriment of Ms. María Nina Lupe del Rosario Andrade Salmón. It also concludes that in the Gader, Street Lamps and Guaglio cases, the State violated the right to a hearing within a reason period of time, protected under articles 8(1) and 25 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Ms. María Nina Lupe del Rosario Andrade Salmón. The Commission also concludes that it has no elements to rule on a possible violation of article 2 of the Inter-American Convention.

## II. PROCESSING WITH THE COMMISSION

8. The Inter-American Commission on Human Rights received the original petition on April 2, 2001. The processing of the petition, from its receipt to the decision on its admissibility, is described in detail in the admissibility report<sup>2</sup> issued on March 19, 2009.

9. On March 31, 2009, the Commission notified the parties of Admissibility Report No. 11/09, informed them that the petition had been classified as case No. 12,693 and, pursuant to Article 38(1) of the Commission's Rules of Procedure, set a two-month deadline for the petitioners to present any additional observations on the merits. Also, in accordance with Article 48(1)(f) of the American Convention, the

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<sup>2</sup> IACHR, Report No. 11/09 of March 19, 2009, paragraphs 5-12.

Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter.

10. Via a communication dated April 24, 2009, the petitioners declined the IACHR's offer to begin the friendly settlement proceeding. In a communication dated June 10, 2009, the State requested an extension. On July 2, 2009, the Commission advised the State that the Bolivian State was not, at the point in the process, facing any deadline. The petitioners presented their additional observations on the merits via a communication dated August 22, 2009. They subsequently sent still more information via communications dated March 29, 2009, and October 5, 2010. The Commission forwarded those communications to the State via communications dated September 4 and September 30, 2009 and March 9, 2011.

11. On March 29, 2011, the State presented observations, which the Commission forwarded to the petitioners on May 24, 2011. In response to the State's request for an extension, on May 25, 2011, the Commission granted it a 30-day extension. In a communication dated April 6, 2011, the State presented observations, which the Commission forwarded to the petitioners on August 17, 2011, giving them one month in which to present observations. The petitioners submitted their observations in a communication dated September 27, 2011, which the Commission forwarded to the State on December 28, 2011.

12. In a communication dated September 28, 2011, the IACHR asked the State and the petitioners to present, within one month's time, updated information on the status of the proceedings in the Gader, Guaglio, Street Lamps, Mendieta, Mallasa and Esin cases and a copy of the principal case records in those proceedings. On January 30, 2012, the State asked the Commission to extend the deadline for presenting the requested information, which the Commission did in a communication dated February 3, 2012. The petitioners sent a communication dated January 31, 2012, which was forwarded to the State for observations. The Commission granted an extension to the State until February 3, 2012 to present those observations. Subsequently, the IACHR received another communication from the petitioners, this one dated February 14, 2012. That communication was brought to the State's attention on March 6, 2012. The State presented observations on March 2, 2012, which were forwarded to the petitioners on March 9, 2012 for informational purposes.

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

#### **A. The petitioners**

13. The petitioners stated that Ms. Andrade was a journalist, commentator and columnist with more than 20 years experience in her profession and known for her stance against corruption. The petitioners pointed out that between January 1998 and June 1999, Ms. Andrade served as President of the City Council of La Paz, and on June 7, 1999, was elected the mayor of La Paz, an office she held until February 6, 2000.

14. The petitioners also stated that during her time as Mayor of La Paz, Ms. Andrade reported corruption in the Mayor's Office under previous administrations and that after leaving office, she was implicated in six criminal cases: Gader, Guaglio (a case of fraud involving the deviation of funds from the General Pension Fund), Mendieta, Street Lamps, Masalla and Esin. In general terms the petitioners alleged that a number of due process violations were committed in those court cases, particularly the right to a hearing within a reasonable period of time, the right to presumption of innocence, the right of defense and the right to be judged by an independent and impartial court.

15. The petitioners alleged that the charges that the prosecutors and examining judges filed were not supported by any evidence or proof showing that Ms. Andrade had any role in the criminal acts of which she was accused. The petitioners maintained that Ms. Andrade was held in pre-trial detention for more than six months, by order of a judge who ran for the office of President of Bolivia in 2002 and who waged his political campaign on the basis of the cases brought against Ms. Andrade.

16. The petitioners pointed out that as a result of an inquiry conducted by the Bolivian Government Commission on April 4, 2003, the Office of the Attorney General of Bolivia filed a request on July 19, 2003, seeking an investigation into the complaints brought against the judges who initiated the criminal cases against Ms. Andrade. Three judges were charged with crimes associated with Ms. Andrade's unlawful detention in 2000 (the crimes of deprivation of liberty, unconstitutional judgments and dereliction of duty). The petitioners stated that on June 3, 2004, the three judges were formally charged and January 4, 2005 was the date set for their trial to begin.

17. The following is a summary of the petitioners' main arguments in each of the criminal cases.

#### **1. Gader Case**

18. According to the petitioners, this case involves a contract that former Mayor Germán Monroy awarded to the Gader Company to provide software to prepare an integrated tax collection system in the city of La Paz. The petitioners contend that the contract was not submitted to the City Council for approval before it was signed, as the law required. Therefore, when Ms. Andrade became mayor of La Paz, she sent the contract to the City Council to correct the omission.

19. The petitioners contend that on May 23, 2000, the incoming Mayor, Juan del Granado, filed a complaint against 8 persons, one of whom was Ms. Andrade. The petitioners point out that for this case, Mayor Juan del Granado arranged to have a Prosecutor assigned to the The Mayor of La Paz's Office to conduct the investigation, in violation of the right to an independent investigation and to an independent determination of the charges. The petitioners stated that on May 8, 2000, the Prosecutor expanded the original indictment against Ms. Andrade Salmón and other persons. As examples of other irregularities, they point out that the prosecutor's request seeking indictment was addressed to a specific judge (the Third Criminal Examining Judge, Alberto Costa Obregón), when Bolivian law dictates that the judges to preside over cases are to be selected randomly. The petitioners contend that despite Ms. Andrade's challenges, the above decisions were not overturned until several months later, when the Constitutional Court ordered it.

20. The petitioners also point out that on June 21, 2000, the Third Criminal Examining Judge expanded the indictment against Ms. Andrade, based on a statement made by Mr. Germán Monroy Chazarreta (Ms. Andrade's predecessor in the La Paz Mayor's Office) and a report prepared by the Financial Investigation Unit (UIF) for another criminal case being heard in an altogether different court (the fraud case involving the siphoning of funds from the General Pension Fund), in which Ms. Andrade was not accused of anything. The petitioners point out that on three different occasions Ms. Andrade asked that the date and time for her statement during the investigative proceedings be set, which was finally held on August 3, 2000; the hearing on precautionary measures was held immediately thereafter, and Ms. Andrade's pre-trial detention was ordered, disregarding the prerequisites that, under Bolivian law, must be met in order to allow pre-trial detention.

21. The petitioners assert that that same day, August 3, 2000, Ms. Andrade filed a petition of *habeas corpus* to challenge the order for pre-trial detention, a petition that the First Chamber of the District Superior Court denied. They point out that on August 31, 2000, the Constitutional Court heard Ms. Andrade's appeal and granted her a writ of *habeas corpus*. The Constitutional Court held that Ms. Andrade's pre-trial detention was unlawful and it therefore ordered that "alternatives to pre-trial detention be applied." The petitioners observe that this judgment notwithstanding, Ms. Andrade was not released until February 10, 2001, because during the hearing on precautionary measures, the Third Criminal Examining Judge had set bail at US\$250,000,000 (U.S. Dollars), an unreasonable amount that had made application of an alternative measure illusory. The petitioners contend that Ms. Andrade's defense appealed the amount of the bail and, on October 2, 2000, the First Criminal Chamber decided to set bail at 80 thousand *bolivianos* and to sanction the Third Criminal Examining Judge with "one day of pay" for the errors he had committed in processing the appeal and that had declared a decision thereon.

22. The petitioners state that on October 23, 2000, the Constitutional Court of Bolivia issued a ruling on an appeal filed by another co-defendant and held that the proceedings were null and void until such

time as the case was randomly assigned, as neither the principal case nor the hearing concerning the precautionary measures had been randomly assigned. Based on that Court ruling, on October 26 and November 3, 2000, Ms. Andrade's defense asked the Third Criminal Examining Judge to issue the warrant for Ms. Andrade's release by virtue of the fact that the proceedings had been declared null and void. Her defense counsel never received any reply to her brief.

23. The petitioners state that on November 7, 2000, the Seventh Criminal Examining Judge issued the order to investigate 12 persons, one of whom was Ms. Andrade. In addition to the crimes of fraud and criminal conspiracy, she was suspected of mismanagement of public resources. The petitioners state that Ms. Andrade made her preliminary statement on November 14, 2000, and once it was finalized, the Seventh Judge held the hearing on precautionary measures, where the prosecutor requested ratification of the precautionary measure prescribed by the Constitutional Court and the District Superior Court, which was bail of 80,000 *bolivianos*. The petitioners report that on November 15, 2000, Ms. Andrade's defense counsel appealed the order of pre-trial detention and on December 1, 2000, the Second Criminal Chamber set bail at 3,000,000 *bolivianos*. Ms. Andrade therefore had to remain in custody, as she did not have the funds to post bail.

24. The petitioners stated that on December 2, 2000, Ms. Andrade's defense counsel filed a second petition of *habeas corpus*, which the First Civil Chamber denied. On December 7, 2000, the First Civil Chamber held a *habeas corpus* hearing and declared the petition inadmissible, despite the fact that the prosecutor had come out in favor of the petition. The petitioners stated that on December 14, 2000, Ms. Andrade's defense counsel presented arguments before the Constitutional Court and that on January 16, 2001 the Constitutional Court upheld the petition and granted a writ of *habeas corpus*. The Court wrote that based on the statements of Ms. Andrade's assets and net worth, presented by her defense counsel, Ms. Andrade would not have been able to post bail. The Court, therefore, ordered that alternatives be ordered that were not impossible for the defendant to meet. The petitioners point out that on January 22, 2001, Ms. Andrade's defense counsel asked the Seventh Civil Examining Judge to set the date for the hearing to determine the alternative precautionary measures. That hearing was set for February 6, 2001, where the court set bail at 40,000 *bolivianos*. On February 10, 2001, Ms. Andrade was released.

25. The petitioners maintain that no further hearings were held until June 2002 and that the process remained in the investigative phase. They also note that before the case was opened and the hearing held, all proceedings leading up to the judge's final instruction in the preliminary proceedings were declared null and void because of the procedural errors; that final instruction in the preliminary phase had to be issued again. The petitioners report that on August 19 and September 16, 2004, they filed a motion to have the criminal case time-barred because the maximum period that a case of that nature is allowed to continue under the Code of Criminal Procedure had been exceeded. They add that these motions were denied on the grounds that the alleged victim had caused the delay in the proceedings.

26. In mid 2009, the petitioners reported that Ms. Andrade was cleared on January 18, 2007, but that the The Mayor of La Paz's Office had appealed the verdict, with the result that the precautionary measures remained in force. In October 2010, the petitioners reported that although the provisional stay had been confirmed by the District Superior Court, under the Code of Criminal Procedure the case could be reopened if new evidence came to light within the first year following notification of the accused' exoneration. They pointed out that to get the case reopened, the La Paz Mayor's Office had introduced new evidence in the form of old statements made by persons accused in the case.

27. In September 2011, the petitioners reported that the Gader case had been reopened even though there was no new evidence; in February 2012, they reported that Ms. Andrade "had again been acquitted" and that they were in a waiting period, as the Mayor's Office could still appeal the verdict.

## **2. Guaglio or Pensions Case (Ham versus Monroy)**

28. The petitioners state that this case is related to the Gader case and that proceedings in the two cases were constantly crossing paths. The petitioners point out that on December 14, 1999, a complaint

came to the Mayor's Office alleging irregularities in the Office of the Director General of Pensions (which is under the Ministry of the Treasury) involving 1,186,000.00 *bolivianos* deposited into the private account of Mr. Enrique Penny Bardelli; this amount of money should have been deposited in the account of the Office of the Director of Pensions as social contributions accrued by employees of the municipality.

29. The petitioners observe that on December 15, 1999, then Mayor Andrade reported the fraud to the Judicial Police (Policía Técnica Judicial - PTJ) to have the matter investigated. They note that on December 17, 1999, the Office of the City Mayor filed a formal complaint with the Public Prosecutor's Office against the persons suspected of being responsible for the fraud. The petitioners state that in its first report, the Judicial Police concluded that there was sufficient evidence of culpability in the case of at least 5 persons, but neither of them was Ms. Andrade. They indicate that on January 31, 2000, the prosecutor's indictment was issued so that proceedings could be instituted against 19 persons. The petitioners state that in the case of Ms. Andrade, the prosecutor asked that the City Council determine whether there were grounds to prosecute and did not charge her with any crime. The petitioners observe that the case was docketed with the Seventh Criminal Examining Judge who on February 2, 2000, issued the order to investigate 19 persons; Ms. Andrade was not named among them. They point that the Mayor's Office did not file a complaint against Ms. Andrade, either, and that the report of the Financial Investigation Unit (FIU) did not hold her responsible for the act; instead, it concluded that funds had been siphoned off into the SERAMEC account, whose legal representative was Mr. Juan Enrique Penny Bardelli, who then funneled those funds to members of the Gader company.

30. The petitioners state that the PTJ's expanded report concluded that there was no evidence implicating Ms. Andrade in any crime. They state that the prosecutor sent this report to the Seventh Criminal Examining Judge, who then sent the case up to the Superior Court of Justice to institute a special case against Ms. Andrade under a special procedure known as "Caso Corte", despite the fact that there was no evidence against her. The petitioners explained that the procedure known as "Caso Corte" was a special legal proceeding used to judge high-ranking public officials and was notorious for the fact that no one was ever convicted. It was, therefore, routinely used to protect "political arrangements" because, by law, this special jurisdiction supplanted the regular courts in these special cases. The petitioners contend that all the accused attempted to implicate Ms. Andrade who, because of her office, was to be prosecuted through that special legal proceeding. They point out that once the case was opened in this "jurisdiction of privilege", all the defendants were released and the process came to a standstill for some months. Then, on June 20, 2000, the Constitutional Court declared this special procedure unconstitutional, whereupon all the proceedings conducted in the case were declared null and void.<sup>3</sup>

31. The petitioners observe that on July 26, 2000, the Eighth Criminal Examining Judge returned the case to the Seventh Criminal Examining Judge to resume proceedings in the case before ordinary courts. They report that on August 19, 2000, they therefore asked the Eighth Judge to nullify the proceedings and exclude Ms. Andrade from the case since the case prosecuted in the regular courts did not name her among the defendants. The petitioners assert that the La Paz Mayor's Office filed a challenge seeking disqualification of the Seventh Examining Judge, which was upheld, whereupon the case was sent to the Eighth Criminal Examining Judge. Ms. Andrade appeared before the Eighth Judge on September 26, 2000, and again asked him to declare the proceedings conducted against her to be null and void. The petitioners report that the case file was referred to the prosecutor for an opinion, which was issued on October 31, 2000. The Prosecutor asked to expand charges against Ms. Andrade with the crimes of dereliction of duty, mismanagement of public resources and fraud. The petitioners state that on November 29, 2000, the Eighth Criminal Court expanded the court order opening an investigation to include Ms. Andrade Salmón and four other persons.

32. They assert that on December 18, 2000, Ms. Andrade's preliminary statement was taken and, in the hearing on precautionary measures held immediately thereafter, the Eighth Examining Judge decided to order other alternatives to pre-trial detention in Ms. Andrade's case. The petitioners point out that for two

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<sup>3</sup> The petitioners reported that in Circular No. 29/2000, of August 22, 2000, the Constitutional Court held that the cases prosecuted in "jurisdictions of privilege" were permanently and henceforth abolished effective June 1, 1999.

years this case remained in the investigative phase and that it was not until June 6, 2002 that the judge issued the order binding Ms. Andrade over for trial.

33. In mid 2009, the petitioners reported that the case against Ms. Andrade had been dismissed and that the verdict had been upheld by the higher court and was under the Supreme Court's review. They stated that the verdict had been appealed and that the precautionary measures had been lifted. In September 2011, the petitioners stated that the case had not yet gone to the Criminal Chamber of the Supreme Court for a decision. They pointed out that since no chamber or judge had as yet been assigned to the case, the defendant languished in a kind of procedural limbo because the defense was unable to file any constitutional actions as there was no authority to whom such an appeal could be directed

34. In February 2012, the petitioners reported that the Supreme Court had overturned the ruling and had convicted Ms. Andrade for dereliction of duty and sentenced her to three years. She is awaiting notification of the decision.

### 3. Street Lamps Case

35. As background to the case, the petitioners point out that on May 13, 1998, the City Council of La Paz approved a trip by then Mayor Germán Monroy to the People's Republic of China. They note that during Mayor Monroy's visit to China, he signed a contract with the Xuzhou company, without the City Council's prior knowledge or approval. Under the contract, the Chinese firm was given three projects, one of which was a project for the La Paz city street lighting. The petitioners state that on August 3, 1998, the City Council approved the agreement and the contract the mayor had signed, which was for US\$7,372,000.00. The petitioners claim that Mayor Monroy subsequently signed an addendum to the contract, again without the City Council's knowledge. That addendum stipulated that the costs of purchasing the materials and spare parts had to be increased. They point out that on October 19, 1998, Mayor Monroy proceeded to pay Xuzhou's representative the sum of US\$5,595,520.00. The City Council had no knowledge of and had not approved that payment.

36. The petitioners point out that on July 5, 1999, then Mayor Andrade asked the Director of Internal Auditing of the Government of La Paz to do a special audit of the deal to purchase street lamps from China and the advance payment, to determine who was responsible and then pursue any legal action that the audit might dictate.

37. The petitioners state that at the time, the National Parliament decided to investigate the cases from former Mayor Monroy's term and that the Public Participation Commission of the Chamber of Deputies requested that legal action be brought by issuing a bill of indictment summoning 10 persons to appear before the Chamber, one of whom was Ms. Andrade. They state that the Full Chamber of the District Superior Court conducted preliminary proceedings against Ms. Andrade and nine other persons. They maintain that Ms. Andrade was charged with the crimes of influence peddling, decisions that contravene the Constitution and the law, and dereliction of duty.

38. The petitioners state that Ms. Andrade was summoned on October 17, 2000, to make her preliminary statement and that during those preliminary proceedings, the Judge did not allow Ms. Andrade's attorneys to be present to defend her and the court even threatened to throw them out of the courtroom. They note that in the hearing on precautionary measures, the Judge denied the application for alternatives to pre-trial detention, even though the sentence that the crimes charged carried allowed for alternatives to pre-trial detention. The petitioners state that Ms. Andrade appealed the order for her pre-trial detention and filed a petition of *habeas corpus*. The petitioners point out that the First Civil Chamber dismissed the petition of *habeas corpus* as inadmissible on the grounds that an appeal was pending, even though the prosecutor was in favor of granting the petition.

39. The petitioners indicate that the Second Criminal Chamber agreed to hear the appeal, and on November 10, 2000, revoked the order of pre-trial detention and set bail at 100,000 *bolivianos*. On November 27, 2000, Ms. Andrade's defense counsel posted bail and requested that the warrant for the alleged victim's



release be issued. They maintain that on December 11, 2000, the Constitutional Court granted Ms. Andrade a writ of *habeas corpus* and ordered the judge whose judgment was appealed to pay compensatory damages. The petitioners state that on January 19, 2001, the warrant for Ms. Andrade's release was issued, which was almost two months after she had posted bail.

40. The petitioners allege that throughout the process, Ms. Andrade was prevented from exercising her right to defend herself and that the case lingered in the investigative phase for two years. They also make the point that the petitions and motions that Ms. Andrade filed went unanswered. According to the petitioners, on March 28, 2003 the prosecutor requested that all proceedings up to the original order for an investigation be declared null and void, based on the Constitutional Court's ruling of March 31, 2003, which held that various co-defendants' right of defense had been violated.

41. The petitioners add that on August 23, 2004 and January 21, 2005, the alleged victim requested that the criminal action be time barred. That request was denied on November 30, 2005, on the grounds that the complexity of the case and the filing of multiple motions and appeals by co-defendants had delayed the proceedings in the case.

42. In mid 2009, the petitioners reported that the court had provisionally dismissed the case against Ms. Andrade (in the lower court) and that the verdict had been sent up to the Criminal Chamber of the La Paz District Court for confirmation. The petitioners indicated that as happened in the Gader case, the dismissal was based on the lack of evidence against Ms. Andrade. They noted that the order not to leave the court's jurisdiction was still in effect; as a result, Ms. Andrade was unable to leave either La Paz or the country.

43. In October 2010, the petitioners reported that although one year had passed since the verdict to dismiss the case against Ms. Andrade, the judge (*liquidador*) had refused to lift the precautionary measures (the order not to leave the court's jurisdiction) because "the city government has made known its intention to reopen the case." In September 2011, the petitioners reported that this case had been reopened. In February 2012, the petitioners reported that the case against Ms. Andrade had been dismissed and that they were waiting to see whether the verdict would be enforced or the La Paz Mayor's Office would appeal.

#### **4. The Mendieta Case (Villa Ayacucho)**

44. The petitioners state that this case was brought against certain La Paz municipality authorities within the framework of compliance a 1994 Constitutional Court ruling that ordered that wooded areas be deeded over to certain persons (Mr. Mendieta among them) to compensate for the expropriation of some of their land; the authorities in question did not enforce the judgment. The petitioners point out that since the property owners whose land had been expropriated wanted the city to hand over the deeds to certain plots of land located in the Achumani area, Ayacucho sector of La Paz, they filed a complaint based on a request of the Prosecutor's Office against various people in the Office of the City Mayor. The petitioners point out that Ms. Andrade was not mentioned in this complaint.

45. The petitioners stated that the Third Criminal Examining Court, which had included Ms. Andrade in the Gader case, also indicted her in this case as well on January 25, 2000, with a court order to investigate her for the crimes of contempt of court and decisions that contravene the Constitution and the law. They pointed out that the bail hearing was held on March 20, 2000, and Ms. Andrade was ordered to post bail of 300,000 *bolivianos*, which at a subsequent hearing held some days later was replaced by an order confining her to the court's jurisdiction and bail of 150,000 *bolivianos*. The petitioners report that Ms. Andrade made her preliminary statement on April 26, 2000 and that between January 25, 2000 and June 2002, only one hearing was held; as a result, the case did not move beyond the investigative phase.

46. The petitioners maintain that despite the fact that on September 6, 2002, the Judge hearing the case agreed to go forward with a negotiated settlement between the parties (the Municipality of La Paz and the civil party), by September 2004 the settlement hearing that would put an end to the case had not yet been held.

47. In September 2006, the petitioners reported that the case was in the Court for Criminal Proceedings (*Liquidador*), in “remand on appeal”. They pointed out that the request to have this case declared time barred was denied.

48. In mid 2009, the petitioners indicated that the case against Ms. Andrade had been dismissed and that the precautionary measures had been lifted. In February 2012, they indicated that the case was closed.

## 5. Mallasa Case

49. The petitioners state that this is a case in which a former La Paz Mayor and other officials allegedly sold land belonging to the Mallasa National Park. They point out that on January 26, 2001, the Mayor of La Paz filed a complaint against Ms. Andrade alleging her failure to bring legal action and consequent dereliction of duty. The petitioners report that, as alternatives to incarceration, the judge hearing the case ordered that Ms. Andrade put up bond, that she submit to a supervised release arrangement requiring weekly check-ins, and that she be confined to the jurisdiction of the court. The petitioners state that although the original charges against Ms. Andrade were filed on January 29, 2001, as of June 2002 no hearing had been held.

50. According to the petitioners, on September 8, 2003, the Fifth Criminal Examining Court (*Liquidador*) issued the final examining decision and ordered the provisional dismissal of the case against Ms. Andrade on the grounds that there was no cause to suspect that the alleged victim had committed the crimes with which she was accused (no probable cause). They point out that the plaintiff –the Government of La Paz- appealed this decision. The petitioners go on to say that on September 16, 2004, they filed a motion to have the case against Ms. Andrade declared time-barred. The judge denied their motion on April 19, 2005, on the grounds that the delay in the proceedings was caused by the defendants’ conduct. The petitioners argue that in this case the failure to meet the legally established deadlines is the fault of the judicial system, which suspended 36 hearings. They contend that Ms. Andrade was not responsible of these suspensions.

51. In mid 2009, the petitioners reported that the case against Ms. Andrade had been dismissed but that the La Paz Mayor’s Office had appealed the decision to dismiss the case against her. The petitioners indicated that the precautionary measures had been lifted. In February 2012, the petitioners reported that the case had not been reopened and was therefore closed, and could not be reopened.

## 6. Esin Case

52. The petitioners state that this case concerns a contract that former Mayor Gaby Candia signed and former Mayor German Monroy extended. They explain that given the litigation pending with the Comprehensive Urban Sanitation Services Company, the City Council had ordered the then mayor to terminate the contract; the contract was nonetheless extended in violation of the legal provisions then in force. The petitioners underscore the fact that Ms. Andrade had no hand in either the contract or its extension, as she was Mayor Monroy’s successor.

53. The petitioners state that via a brief dated February 16, 2001, the Government of La Paz, in the person of Mayor Juan del Granado Cossio, brought a complaint against Germán Monroy Chazarreta and others based on the Special Internal Auditing Report dated June 27, 2000, concerning the decision to enter into a contract with the ESIN urban sanitation services company, as evidence had been uncovered suggesting criminal liability. The petitioners state that on May 10, 2002, the judge who was assigned the case ordered a criminal investigation of Germán Monroy Chazarreta and other persons, one of whom was Ms. Andrade. In February 2012, the petitioners reported that the case had been closed, since the charge against Ms. Andrade was dismissed.

## **Allegations related to the 6 criminal cases**

54. In connection with all the above cases, in September 2006 the petitioners reported that from a procedural point of view, the cases were at a standstill, except for case known as Guaglio or the pensions' case. They indicated that as of that date, no examination of the cases had been done, nor had any decision on the merits been delivered; the only action on these cases had to do with secondary petitions, permits and other issues like time-barring and precautionary measures.

55. In their additional observations on the merits, the petitioners alleged that by ignoring the prerequisites for pre-trial detention described in the Code of Criminal Procedure and by ignoring the judgments of the Constitutional Court that held that Ms. Andrade's incarceration was unlawful, the State of Bolivia has violated articles 7(2), 7(3) and 7(6) of the American Convention.

56. The petitioners also maintained that by bringing 6 cases against Ms. Andrade, despite official reports exonerating the alleged victim of any blame, by directing cases to specific judges in violation of the Bolivian law that requires random selection of courts and judges, by keeping these cases in the investigative phase for years when Bolivian law requires that the investigative phase shall not last more than 20 days, by denying the motions to have the cases time-barred in accordance with the laws in force, the Bolivian State violated Ms. Andrade's rights to due process and to a presumption of innocence, rights guaranteed under articles 8(1) and 8(2) of the American Convention. The petitioners also maintain that the above cases are not so complex as to justify the time that has passed since the cases were first brought; they therefore allege that the Bolivian State has violated Article 8(1) of the American Convention.

57. As for the alleged violations of Article 21 of the American Convention, the petitioners maintain that by freezing Ms. Andrade's bank accounts, forcing her to post unreasonable bail, and causing the circumstances that made her unemployable for life because of criminal cases in which her rights to due process were violated, the Bolivian State has violated the right recognized in Article 21 of the Convention, especially inasmuch as the precautionary measures ordered in the Gader and Street Lamps cases are still in effect to this day.

58. The petitioners also allege that the State has violated articles 22(1), 22(2) and 22(3) of the American Convention by denying Ms. Andrade a passport, by having ordered her confinement to the court's jurisdiction and by prohibiting her from traveling beyond La Paz, even though she has not been convicted of or sentenced to anything. They maintain that the alleged violations of Article 22 of the Convention are a consequence of the violations of due process of law. The petitioners argue that for more than nine years, and in direct violation of Bolivia's laws on the imposition of precautionary measures in criminal cases, Ms. Andrade has been unable to move about freely within Bolivia or to leave Bolivian territory at will, in direct violation of Article 22 of the American Convention.

59. As for the alleged violation of Article 25 of the Convention, the petitioners contend that by ignoring the rulings of the Constitutional Court that declared her incarceration to be unlawful, the State violated Article 25 of the American Convention, since the remedies afforded by the Bolivian State have been ineffective.

60. The petitioners state that on December 22, 2004 they reached a Friendly Settlement with the State, under the procedure provided for in Article 48 of the American Convention, and that while partial compensation was paid under the terms of the agreement, the Bolivian Government refused to act on the other terms of the agreement.

## **B. The State**

61. The State asserts that on January 23, 1997, the Plurinational State of Bolivia ratified the Inter-American Convention against Corruption, and within the scope of this Convention the Bolivian State has established that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples. The State contends that the ratification of the Inter-American Convention against Corruption has informed its commitment to fight corruption by strengthening the institutions of democratic government, avoiding inequities in the economy,

vice in government and the breakdown of morality. It pointed out that for years, the The Mayor of La Paz's Office endured corrupt administrations that drained the city's coffers and bankrupted the city, with scandalous consequences. The State contends that the problems were ignored and were not deemed important enough to be investigated and punished with exemplariness. It also claims that everything done by the State in terms of investigation and evidence had but one purpose, which was to try to elucidate acts of corruption and sanction them accordingly.

62. The State maintains that Ms. Andrade is facing 6 criminal cases having to do with her time in office as a member of the city council and mayor in the period from 1996 to 2000. It notes that she brought a criminal case in the Bolivian courts seeking reparations for the harm allegedly done to her honor and dignity. The State recounted the reasons why the six criminal cases were brought against Ms. Andrade. It indicated that the above six cases, in which Ms. Andrade was named a co-defendant, do not stem from any single event; instead, they are the result of a number of related events involving alleged mismanagement of the Bolivian people's monies.

63. In the Gader case, the State observed that in the wake of an irregular contracting process, on May 14, 1999 former Mayor Germán Monroy issued a Municipal Resolution under which he made an exception in order to retain the services of the firm GADER SRL for the sum of US\$ 1,800,000 to prepare an integrated tax collection system. The State asserted that in communication No. 095/1999, the City Council ordered the Mayor "to terminate the contract and the payment corresponding to that commitment until the City Council takes a decision on the matter." The State points out that the foregoing notwithstanding, Ms. Andrade Salmón, in her capacity as Mayor, ordered payment of the sum of US\$ 1,070,000 to GADER SRL.

64. Regarding the Street Lamps case, the State asserted that according to the report prepared by the Citizen Participation and Decentralization Committee, dated February 11, 2000, Ms. Andrade, as President of the City Council, did not comply with the regulations that establish that a joint report of the legal and financial commissions should be adopted prior to discussion of the contract, which did not have the clearance from the Ministry of Foreign Affairs and the Ministry of the Treasury either; she led other council members astray; she brought pressure to bear on members of the city council to vote in favor of the contract, and signed Municipal Ordinance No. 179/98 in which the agreement and contract were approved, despite the fact that the Council's decision was to ask the executive branch to determine what law was applicable to the contract, and to have the debt listed with the Ministry of the Treasury.

65. Related to the Guaglio or Pension case, the State pointed out that on November 22, 1999, then Mayor Andrade Salmón made out a check in the amount of 696,816.17 *bolivianos* to the SERAMEC company, which had defrauded the Government of La Paz regarding payment of contributions to the city employees' Pension Fund. In the Mallasa case, the State indicated that Ms. Andrade, who was aware that criminal acts had been committed involving Mallasa City Park, nevertheless failed to bring legal action against the City Mayor and failed to order the necessary investigations to identify who the responsible parties were. In the Esin case, the State observed that as President of the City Council, Ms. Andrade signed and put her rubric on a Municipal Ordinance approving the agreement signed between ESIN and the Government of La Paz, causing the City of La Paz an economic loss on the order of US\$ 719,400.

66. The State argued that it had guaranteed Ms. Andrade's right to a prompt and just legal process, in which constitutional remedies were invoked to repair the allegedly violations of her rights. Here, the State underscored the fact that the Constitutional Court acted promptly, effectively and impartially when it granted Ms. Andrade a writ of *habeas corpus*. The State alleged that the rulings delivered by Bolivia's Constitutional Court on the alleged victim's petition of *habeas corpus* ordered alternatives to pre-trial detention; they specifically ordered bail in lieu of pre-trial detention, which meant that for the court to order Ms. Andrade's release, she had to post bail. The State alleged that inasmuch as Ms. Andrade did not comply with this procedural requirement, and the bail that she did offer to post was not the full amount ordered, her release was not immediately ordered. The State claimed that had the alleged victim requested release on her own recognizance under Article 242 of the Code of Criminal Procedure, it may have been granted. To be granted release on her own recognizance she would have had to offer and produce proof of her own

indigence. The State therefore alleged that the domestic legal system had offered alternative mechanisms of which Ms. Andrade could have availed herself, such as release on one's personal recognizance.

67. The State also indicated that as a consequence of the measures taken and the complaint that the Vice Minister of Justice filed with the Attorney General of the Republic, an investigation was launched into the cases that the alleged victim brought in the domestic courts against judges Constancio Alcon Paco, Rolando Sarmiento and former judge Alberto Costa Obregón. It reported that the prosecution assigned to investigate had opened case 3870/03 against the aforementioned judges, for the alleged crimes of deprivation of freedom, decisions that contravene the Constitution and the laws, and failure to comply with writs of *habeas corpus* and constitutional *amparo*. The State reported that formal charges were brought on November 27, 2003.

68. The State alleged that in the present case, Ms. Andrade's human rights were not violated. The State maintained that Ms. Andrade's rights and freedoms were respected, as she was prosecuted in accordance with the provisions of the Constitution and relevant procedural laws; as the Constitution requires, it was the Judicial Branch that prosecuted and decided the criminal cases brought against Ms. Andrade. It also observed that in the instant case, the principle of presumption of innocence has been observed, since Ms. Andrade is not currently in custody, even though a conviction has been handed down against her. It points out that in the Pensions case, the lower court convicted Ms. Andrade of mismanagement of public resources and sentenced her to 3 years in prison, a sentence that has never been enforced. As for the alleged violation of Ms. Andrade's honor and dignity, the State argued that she has never been told anything but the truth and that criminal proceedings were instituted in these cases on the basis of reports prepared by the Office of the Comptroller General of the Republic in some cases, whereas in others, the provisions set forth in Article 34 of Law No. 1178 on Government Oversight were invoked, as was Article 30 of Supreme Decree No. 23318, on Responsibility in Public Office. Concerning the alleged violation of the right to property, the State observed that any criminal proceeding involves two actions: 1) a criminal action to impose a sentence of imprisonment, and 2) a civil action to redress the harm done.

69. The State maintained that because Ms. Andrade was one of many co-defendants in the various cases prosecuted against her, there were delays. However, it argued, the alleged victim had legal remedies available to her to correct this situation.

70. In its observations on the merits, and specifically with reference to the alleged violation of articles 7 and 25 of the American Convention, the State pointed out that Article 9 of the 1994 Constitution recognizes the right to physical freedom, which is guaranteed under Article 9 of the Constitution. That right, the State observed, may only be restricted by way of exception: 1) in the cases and in the manners prescribed by law; 2) by order of a competent authority, and 3) by a warrant issued in writing.

71. The State also pointed out that Article 22 of the Constitution now in force expressly recognizes that the dignity and liberty of the person are inviolate. The State also observed that Article 1(II) of Law No. 1836 of April 1, 1998 (Constitutional Court Act) states that one of the Constitutional Court's essential purposes is to ensure respect for and exercise of the basic constitutional rights of persons subject to its jurisdiction. The Constitutional Court devoted priority attention to the protection of Ms. Andrade's human rights through its rulings on the petitions of *habeas corpus* she filed against court decisions which were considered as improper and illegal. Therefore, the State alleged, the Constitutional Court gave practical effect to the above basic constitutional and guarantees in the rulings it delivered in her favor. The State thus observed articles 7(6) and 25(1) of the American Convention.

72. The State reported that through the constitutional procedures, action was taken on the request seeking reparations for any damages caused, as the Constitutional Court admitted an incidental complaint for assessment of damages for Ms. Andrade as part of the petitions of *habeas corpus*, as follows from the Constitutional Court's ruling No. 1160-R of December 11, 2000. The State indicated that given the above described laws, Ms. Andrade could have pursued an incidental complaint for assessment of damages and injuries in the other criminal cases in which the alleged victim believed that her right to personal liberty was somehow violated, and seek reparations and/or damages via this avenue. Therefore, the State believes

that it has provided the legal mechanisms for Ms. Andrade to seek proper redress of her constitutional rights and guarantees via the avenue of *habeas corpus*.

73. As for the alleged violation of articles 8(1) and 25 of the American Convention, the State pointed out that the petitioners' allegations to the effect that the matters under review are not complex, constitutes a prejudgment on the merits of the facts and of the law.

74. The State is asking the IACHR to consider the following: 1) based on the principle of equality, any individual may be prosecuted, with the exceptions made for the distinctions and privileges recognized in the Constitution of the Plurinational State; accordingly, the various criminal cases against Ms. Andrade were prosecuted in the regular courts. Furthermore, certain criminal cases were instituted when private citizens filed complaints, as in the case of Mr. Luis Ángel Mendieta; 2) the investigation and proceedings against Ms. María Nina Lupe del Rosario Andrade Salmón and other persons implicated in the commission of the alleged crimes can be traced to the mismanagement of State funds by the authorities and former officials of the La Paz Mayor's Office; 3) the criminal cases have to do with the commission of acts of corruption, whose effect is to delegitimize public institutions -in this case, the Government of La Paz; 4) in the instant case, consideration must be given to Article 120 of the 1972 Code of Criminal Procedure<sup>4</sup> which states that in the examining phase, the accused has all the means established in law to fully exercise his or her right of defense and to disprove the charge and obtain, if appropriate, a final order of dismissal<sup>5</sup>; 5) while it is true that some of the criminal cases against Ms. Andrade were dismissed, the criminal case continued with respect to the other alleged authors and accomplices if sufficient evidence of their guilt was established; therefore, when the time comes for a decision on the merits, the judge has to consider the author's personality, the seriousness of the offense, the circumstances, the consequences of the crime, the degree of criminal involvement and the inculpatory and exculpatory evidence; 6) when one considers the 8 cases as a whole, their many victims, the number of defendants and the obstructionist behavior of the defendants are indeed complicating factors.

75. The State alleged that the multiple defendants in the cases also exponentially multiplied the number of motions and objections allowed under the law, thereby disrupting litigation on the central facts of the cases. It argued that the motions filed were, as a rule, procedural in nature, requiring the parties to appear for a separate hearing before the competent court; based on its authorities, the latter then had to rule on each one, so as to be able to move the case forward and get a decision on its merits. These motions and objections thus caused judicial delay. The State asserted that in the various criminal cases, motions were constantly being filed, as were unfounded remedies; the parties to whom the competent authorities issued summonses did not appear; motions were filed to have judges disqualified, and various co-defendants were declared in contempt of court. The State alleged that in the Mendieta, Mallasa, Guaglio, Gader and Street Lamps cases, the various judges hearing the petitions filed by Ms. Andrade to have each case declared time-barred, ruled that criminal action could not be time-barred because it was clear that the delay in the proceedings was due to the conduct of the accused or their attorneys, the complexity of the case and the number of co-defendants.<sup>6</sup> In the Esin case, the State pointed out that the complaint was dismissed and the record closed at the very start of proceedings, so that Ms. Andrade's right to be tried within a reasonable period was not violated.

76. As for the alleged violation of Article 21(1) of the Convention, the State asserted that at no time was the alleged victim's exercise of her right to ownership of her property violated; instead, the court ordered her to post bail and immobilized her ability to freely dispose of her assets; therefore, Ms. Andrade is

<sup>4</sup> Article 120 of the Code of Criminal Procedure, DL No. 10426 of August 23, 1972: "[...] the first stage of the trial, called the examining phase, consists of public court proceedings to investigate the facts surrounding the criminal charge, ensure the suspect's presence for the proceedings and his or her civil responsibility, in order then to examine into the merits or order the case dismissed."

<sup>5</sup> The State is citing Constitutional Court Order No. 345/99-R of November 19, 1999, Constitutional Court of Bolivia.

<sup>6</sup> In the Mendieta case, the State was referring to Resolution No. 143/2005 of September 30, 2005; in the Mallasa Case, it was referring to Resolution No. 31/2005 of April 19, 2005 and Resolution No. 098/06 of February 6, 2006; in the Guaglio Case, the State's reference was to Resolution 90/2005 of September 9, 2005; in the Gader Case, Resolution No. 05/2005 of August 13, 2005, and in the Street Lamps Case, Resolution No. 103/2005 of November 30, 2005.

able to continue to enjoy her property and if she is acquitted she may again be able to dispose of her assets. Concerning the alleged violation of the right to freedom of movement, the State claimed that any person being prosecuted faces a number of restrictions on his or her freedom of movement, and the free disposition of his or assets. These restrictions are allowed under the law, must be applied by the competent authority and must be performed in accordance with the legal requirements. The state alleged that in the criminal proceedings instituted against Ms. Andrade, it was a judge who ordered the precautionary measure confining her to the court's jurisdiction, as she was a defendant in a criminal case instituted on the basis of elements suggesting culpability.

77. The State claimed that the petitioners allegations' are vague, as they fail to explain the bases of their allegations and do not indicate what amounts or bank accounts were frozen, or how long access was denied to create a bank account in the alleged victim's name. The State alleged that it did not violate Article 21 of the Convention to the detriment of Ms. Andrade, since she has always been able to own personal and immovable property, subject to registration and with the limitations established under Bolivian law, as the American Convention provides: "[...]The law may subordinate such use and enjoyment to the interest of society", and specifically where the property of the State is concerned. The State alleged that at no time did state agents take any measure to unlawfully expropriate or appropriate Ms. Andrade's assets, and she has certainly never been denied exercise of those rights.

78. The State maintained that the provisional measure ordered in the criminal cases brought against Ms. Andrade, requiring her to post bail either in the form of cash or property, cannot be deemed to be unreasonable and incompatible with the spirit of Article 21 of the American Convention. The State argued that bail posted in the form of money or property is provided for in the Code of Criminal Procedure, not as a penalty that depends on the degree of the accused' criminal liability; instead the type and amount of the bail are determined by factoring in the elements indicated in articles 240, 241 and 244 of the Code of Criminal Procedure, which are related to the aims of the process. Here, the State pointed out that one of the factors weighed by the courts concerns the "procedural risks", in other words, the flight risk and risk of obstruction of the investigation and prosecution of the criminal case. The State reasoned, therefore, that the primary purpose of bail in the form of money is to ensure that the person being prosecuted will not attempt to elude justice.

79. The State alleged that the precautionary measure of posting bail, as established in Bolivian law, is in keeping with the jurisprudence of the European Court of Human Rights, which has written that:

[...]The guarantee provided for by that Article (art. 5-3) is designed to ensure not the reparation of loss but rather the presence of the accused at the hearing. Its amount must therefore be assessed principally by reference to him, his assets and his relationship with the persons who are to provide the security, in other words to the degree of confidence that is possible that the prospect of loss of the security or of action against the guarantors in case of his non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his part to abscond.<sup>7</sup>

80. Furthermore, the State maintained that a court order imposing a precautionary measure is not a final order. It indicated that in the present case, under Article 250 of the Code of Criminal Procedure, bail can and could be entirely revoked, as the alleged victim herself recognized by filing the respective remedies to have the bail ordered in her specific case either lowered or replaced by an alternative measure.

81. The State pointed out that as the constitutional precedents established by Bolivia's Constitutional Court held, "while Article 241 of Law No. 1970 provides that the sole purpose of bail is to ensure that a defendant will meet the obligations imposed, and must be assessed by reference to the defendant's assets, it is also true that a defendant must present information and evidence to enable the judge

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<sup>7</sup> The State is citing the judgments of the ECHR in the case of *Neumeister v. Austria* of June 27, 1968, paragraph 14, and in the case of *Iwańczuck v. Poland*, paragraph 66.

or court to get a clear and real picture of his or her assets at the time bail is set, based on those assets. The court cannot be expected to assume, as a general rule, that a defendant is a person of either modest or fair economic means or circumstances.”<sup>8</sup>

82. The State argued that as the petitioners acknowledge, the precautionary measures ordered against Ms. Andrade in certain criminal cases were canceled and the property returned, in keeping with Article 249 of the Code of Criminal Procedure. That article states that precautionary measures shall be lifted when: 1) the decision to require bail is revoked; 2) the accused is acquitted or the case against the accused is dismissed, or 3) the record in the case is closed by a final decision not subject to appeal. The State argues that in accordance with that article, the precautionary measures in the Mallasa and Mendieta cases were lifted because the case against Ms. Andrade was dismissed. The State argued that a precondition for lifting precautionary measures is the accused’ interest and initiative, which was not present in the other cases in which Ms. Andrade is standing trial, even when the court ordered the case against her dismissed.

83. As for the alleged violation of Article 22 of the American Convention, by denying Ms. Andrade a passport, ordering her confined to the court’s jurisdiction, and prohibiting her from traveling beyond La Paz, the State argued that an order confining a person to the court’s jurisdiction is a precautionary measure of a personal nature intended as an alternative to pre-trial detention. Its purpose in a given case is to ensure that the accused is present for the inquiry into the facts, the prosecution of the case and the enforcement of the law. The State pointed out in this regard that under Article 240(3) of the Code of Criminal Procedure, when pre-trial detention is not the proper precautionary measure but the risk of flight or obstruction of the proceedings exists, the judge or the court may issue a well-reasoned decision ordering the use of the alternative measure of “Prohibiting the person concerned from leaving the country, the place in which he or she resides or the area prescribed by the judge or the court, without the court’s or judge’s authorization, and conveying said order to the competent authorities.” The State alleged that the order confining Ms. Andrade to the court’s jurisdiction meets the tests of being a proportionate, legitimate, temporary measure of last resort, as established in Article 240 of the CPP. It observed that this measure is never definitive, since it can be changed anytime from the start of the criminal process, as stipulated in Article 250 of the Code of Criminal Procedure.

84. The State further alleged that this measure could have been suspended temporarily had the alleged victim so requested; in other words, once the measure is ordered, the judge or court can authorize an exception to allow the accused or the defendant to go beyond the boundary set in the order confining her to the court’s jurisdiction. It pointed that the order confining a person to the court’s jurisdiction is one of the precautionary measures available to a court and its purpose is to protect the criminal proceedings necessary in the investigation, to help advance prosecution of the case and enforce the law. By way of example, the State pointed out that in the criminal case known as the Street Lamps Case, Ms. Andrade filed a request for authorization to go to Chumani for health reasons; she later requested that the order confining her to the court’s jurisdiction be temporarily lifted for work-related reasons. The judges evaluated the request in December 2001, and granted it.

85. The State concluded, therefore, that there are no grounds to allege a violation of the right to freedom of movement and residence under Articles 22(1) and 22(2) of the American Convention, less still to claim the State’s failure to provide effective and suitable remedies under domestic law.

86. In March 2012, the State reported on the status of the cases against the alleged victim. With regard to the Gader case, the State pointed out that on January 18, 2007, a provisional order was issued in which the case against Ms. Andrade was dismissed, whereupon the Government of La Paz filed an appeal. For the examining phase, the case was randomly assigned to the Second Criminal Chamber, which recused itself; the case was then referred to the Third Criminal Chamber, which issued a ruling upholding the decision to drop the case against Ms. Andrade. Then, on August 19, 2010, the Government of La Paz, as a victim and in accordance with the provisions of the CPP, requested that the case be reopened, attaching as evidence

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<sup>8</sup> The State is referring to the constitutional precedent contained in Constitutional Court Judgment No. 162/2002-R of February 27, 2002.



confessions made by defendants in the main case. The State reported that the Prosecutor had recommended that the case be reopened, and the preliminary investigation order be issued. The State asserted that on December 15, 2011, the judge in the case issued a decision in which he ordered the case against Ms. Lupe Andrade Salmón dismissed.

87. In the Street Lamps Case, the Government reported that on February 19, 2011 the Government of La Paz had requested that the case be reopened. The case was in fact reopened since cause had been established and thus the initial investigative order was issued and latter the final instruction order. The State indicated that the defendants appealed the final instruction and later, through an order issued by a judge, the provisional decision to dismiss the case against Ms. Andrade was revoked. The State reported that Ms. Andrade filed a request seeking disqualification of the First Criminal Trial Judge (*Liquidador*), so that at the present time measures are being taken to remit the case files to the Second Criminal Trial Court.

88. In the Gader and Street Lamps cases, the State asserted that Law No. 1178 and related provisions require that public servants pursue the cases instituted to their ultimate conclusion, and must exhaust every available remedy under domestic law. It pointed out that based on the fact that Ms. Andrade had likely committed crimes of corruption, the Government of La Paz and the Public Prosecutor's Office still have a duty to pursue every avenue with the competent courts for a determination of whether or not she bears any criminal responsibility. Consequently, the State alleged that there is no unlawful or arbitrary prosecution against Ms. Andrade or any other person. It pointed out that under Article 221 of the Code of Criminal Procedure of 1972, which is the applicable law in the criminal cases involving Ms. Andrade, when the order to dismiss the case against the defendant is provisional in nature, the plaintiff or the prosecutor may reopen the case just once, within one year from the date on which the order became final. It indicated that if in this second proceeding the case against the accused is dismissed again, the plaintiff shall be liable for any damages and harm caused. The State maintained that because of this clause in the law, the Government of La Paz, as victim and plaintiff, has again brought the two cases (Street Lamps and Gader) against Mr. Andrade, having legally obtained the respective indictments from the prosecutors, which have come out in favor of reopening the cases. The State indicated that this action cannot be deemed a violation of the alleged victim's rights.

89. In the Guaglio case, the State reported that La Paz' Fourth Criminal Trial Judge (*Liquidador*) convicted Ms. Andrade and sentenced her to three years in prison (Decision No. 12/04 of January 28, 2004). On appeal, Ms. Andrade was acquitted, whereupon the City Council of La Paz filed a petition of *cassation* to challenge the verdict. The appeal went to the Second Criminal Chamber of the Supreme Court on March 26, 2007. The State indicated that on October 27, 2011, the Second Criminal Chamber of the Supreme Court found Ms. Lupe Andrade Salmón guilty of the crime of mismanagement of public resources and sentenced her to three years in the *Obrajes* public prison of La Paz; it also ordered her to pay the State's costs and expenditures. It reported that as of late January 2012, the case was with the First Criminal Trial Court (*Liquidador*), and the ruling had become *res judicata*. The State indicated that Ms. Andrade had requested conditional suspension of her sentence, in accordance with the Code of Criminal Procedure.

90. The State reported that the precautionary measures ordered for Ms. Andrade in 2007 in the Mallasa case had been lifted; in the Mendieta case, the State reported that the case was time-barred. Finally, the State reported that Ms. Lupe Andrade is not involved in the ESIN case.

91. Also, in March 2012, the State reported that on February 7, 2012, the President of the Plurinational State of Bolivia enacted into law the text of the new Constitution, Article 123 of which provides that "the law is forward-looking and shall not have retroactive effects except [...] in matters of corruption, to prosecute and punish the crimes that public servants commit against the interests of the State." The State reasoned, therefore, that the Constitution of the State is fully applicable, even retroactively, to the cases brought against the petitioner, since in those cases, she is being prosecuted for acts of corruption she committed in her role as President of the City Council and as former Mayor of La Paz, acts that have caused financial harm to the Government of La Paz. It argued that Article 112 of the Constitution now in force provides that "crimes committed by public servants that strike at the State's assets and inflict serious financial damage are not subject to the statute of limitations and the accused cannot claim immunity." The

State argues that based on this provision of the Constitution, the criminal cases brought against the former city officials for acts of corruption are not subject to the statute of limitations, and must be pursued until a final verdict is delivered.

92. The State observed that under the December 22, 2004 Conciliation Agreement signed under the Commission's auspices, the State made good on fair and adequate compensation to Ms. Andrade, as the petitioners themselves acknowledge. Furthermore, the State pointed out that inasmuch as reparations for damages and injuries have already been paid on the domestic front, Ms. Andrade's claim seeking financial re-indemnization is out of place.

93. Finally, the State considers that in the present case, it has not violated articles 7(2), 7(3) and 7(6), 8(1), 21(1), 22(1), 22(2) and 22(3) and 25(1) of the American Convention, read in conjunction with articles 1 and 2 thereof.

#### **IV. FINDINGS OF FACT**

##### **A. Assessment of the evidence**

94. Pursuant to Article 43(1) of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the "IACHR's Rules of Procedure"), the Commission will examine the arguments, the evidence presented by the parties and will take into account other information that is a matter of public knowledge.<sup>9</sup> As reported in the section on the processing of the case, on December 28, 2011 the Commission asked both parties to provide updated information on the status of the 6 criminal cases, and a copy of the principal case documents in those six cases. The Commission notes that while both parties supplied certain information on the status of the cases and, during the processing of the case with the Commission, have supplied various case documents, the IACHR had still not received all the principal documents from the 6 criminal cases when the time came to prepare this report on the merits.

##### **B. Facts established**

95. Ms. Andrade was elected to the city council in 1995 and took office in January 1996, serving as Chair of the Juridical Commission. In 1998, Ms. Andrade was President of the City Council of La Paz, and was re-elected in January 1999. Upon the resignation of Germán Monroy, then Mayor of La Paz, on June 2, 1999, Ms. Andrade was elected Mayor of La Paz on June 7, 1999, and served during the remaining time that corresponded to former Mayor Germán Monroy, that was to February 6, 2000.<sup>10</sup>

##### **1. The Gader Case**

96. As background information, the case file shows that the Government of La Paz, in the person of then Mayor Germán Monroy Chazarreta, signed a contract with GADER SRL for design and development of an integrated tax collection system, under the 'no-bid' or 'sole-source' contracting system [*"contratación por*

<sup>9</sup> Article 43(1) of the IACHR's Rules of Procedure: "The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge."

<sup>10</sup> Annex 14. Decision No. 154/2002, Examining Court's Final Order of August 24, 2003, issued by the Capital's Eighth Criminal Examining Court (*Liquidador*) in the indictment that Juan del Granado Cossio, representing the Government of La Paz, sought against Germán Monroy and others for the crimes of fraud, use of a falsified instrument, contracts detriment to the State, mismanagement of public resources, criminal conspiracy, dereliction of duty and cover-up. Attachment to the State's brief of June 14, 2004.

*excepción*"]. The contract was for US\$ 1,800,000.<sup>11</sup> The City Council of La Paz approved this contract on December 7, 1999, when Ms. Andrade was serving as Mayor of La Paz.<sup>12</sup>

97. On January 21, 2000, the Government of La Paz sent a Report of the Financial Investigation Unit (FIU) to the La Paz District Attorney. The report detailed how 12,224,389.80 *bolivianos* in city funds had been siphoned off and diverted elsewhere, and established that there was no oversight of the Government of La Paz's check issuance process, which implied blame on the part of the officials who authorized and signed the checks. The District Attorney was therefore asked to undertake the corresponding investigation and criminal prosecution.<sup>13</sup> The FIU report stated that "the irregularities described above would be directly associated with the laundering of the illicit proceeds (money laundering) from suspected crimes committed by public officials in the performance of their functions (corruption)."<sup>14</sup>

98. Subsequently, on March 1, 2000, Mayor Juan del Granado Cosio asked the Auditor General of the Government of La Paz to conduct an audit of the tendering, award of the winning tender, contracting of and payments made to GADER SRL. The audit, delivered on March 22, 2000,<sup>15</sup> recommended that, because there were signs suggesting criminal liability, the corresponding actions should be brought against former Mayor Germán Monroy and 7 other persons, in furtherance of articles 61<sup>16</sup> and 62<sup>17</sup> of Supreme Decree No. 23318-A. Ms. Andrade was not among those named in that audit report.

99. On March 23, 2000, then La Paz Mayor Juan del Granado Cosio filed a complaint with the Public Prosecutor's Office in which he alleged that a number of former city officials and other persons committed criminal acts. He also requested that the conduct of the former members of the City Council who had approved the "fraudulent contract" on December 7, 1999 be investigated.<sup>18</sup>

100. On April 26, 2000, the Public Prosecutor's Office took a statement from Ms. Andrade for informational purposes. During her statement she was told that she had 48 hours in which to present exculpatory evidence.<sup>19</sup> On May 8, 2000, the Prosecutor's Office filed a request with the Third Criminal Examining Judge, asking him to issue the order to investigate 17 persons, one of whom was Ms. Andrade

<sup>11</sup> Annex 1. Audit Commission's Report AIE-016/2000, addressed to the Honorable Mayor of La Paz, Dr. Juan del Granado Cosio, concerning the special audit of the bidding, contracting and criminal liability, March 22, 2000, p. 11. Attachment to the petitioners' brief of June 20, 2002.

<sup>12</sup> Annex 1. Audit Commission's Report AIE-016/2000, address to the Honorable Mayor of La Paz, Dr. Juan del Granado Cosio, concerning the special audit of the bidding, contracting and criminal liability, March 22, 2000, p. 13. Attachment to the petitioners' brief of June 20, 2002.

<sup>13</sup> Annex 115. Financial Investigation Unit's Report to Dr. Corina Machicao, La Paz District Attorney, dated January 21, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>14</sup> Annex 115. Financial Investigation Unit's Report to Dr. Corina Machicao, La Paz District Attorney, dated January 21, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>15</sup> Annex 1. Audit Commission's Report AIE-016/2000, addressed to the Honorable Mayor of La Paz, Dr. Juan del Granado Cosio, concerning the special audit of the bidding, contracting and criminal liability, March 22, 2000, p. 1. Attachment to the petitioners' brief of June 20, 2002.

<sup>16</sup> Article 61 of Supreme Decree No. 23318-A: "(indicia of criminal wrongdoing). Public servants or other contract professionals who discover indicia suggesting that a crime has been committed, shall prepare a careful and confidential document reporting their suspicions to the appropriate legal office. The report shall contain an account of the acts or omissions, and shall include the evidence, or information as to where such evidence can be found.

<sup>17</sup> Article 62 of Supreme Decree No. 23318-A: "The competent authority shall immediately report the facts in a legal report filed with the Public Prosecutor's Office or, if appropriate, shall forwarded the respective complaint. Where appropriate, the competent authority shall become a civil party to the matter; the highest ranking executive officer and principal legal advisor shall be required to pursue the prosecution of the case to its conclusion."

<sup>18</sup> Annex 110. March 23, 2000 complaint filed by Juan del Granado Cosio with the Representative of the Public Prosecutor's Office, concerning criminal acts. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>19</sup> Annex 111. Informative statement given by Maria Nina Lupe del Rosario Andrade on April 26, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

Salmón.<sup>20</sup> On May 9, 2000, Ms. Andrade Salmón asked the Third Criminal Examining Judge to return the case to the Public Prosecutor's Office since the City Government had filed the indictment in violation of the procedure for random selection of the courts that will hear cases.<sup>21</sup> The Commission has not been informed as to whether this request was answered.

101. On May 24, 2000, the Mayor of La Paz filed a complaint with the Third Criminal Examining Judge requesting that he order investigation of 8 persons, one of whom was Ms. Andrade, on the grounds that she, "as President of the City Council," had allowed "payments to GADER SRL to continue."<sup>22</sup>

102. On June 21, 2000, the Third Criminal Examining Court expanded the order to investigate Ms. Andrade on the grounds that her conduct fit the conduct criminalized in Article 335<sup>23</sup> (fraud) and article 132<sup>24</sup> (criminal conspiracy) of the Penal Code; he also added two other names to the order.<sup>25</sup>

103. On August 2, 2000, the Capital's Third Criminal Examining Court took a preliminary statement from Ms. Andrade during the investigative proceedings,<sup>26</sup> and on August 3, 2000, ordered that she be held in pre-trial detention, based on the preliminary proceedings conducted against her for the crimes of fraud and criminal conspiracy (articles 335 and 132 of the Penal Code), in application of Article 233<sup>27</sup> of the Code of Criminal Procedure, but "without elaborating upon the legal considerations."<sup>28</sup> On that same day, August 3, 2000, an order was issued to have her incarcerated in the Women's Prison.<sup>29</sup>

<sup>20</sup> Annex 112. Office of the Public Prosecutor of the Nation, La Paz District Attorney's Office, May 8, 2000, signed by Rodolfo Moraira Tórriz, Prosecutor Attached to the La Paz Mayor's Office.. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>21</sup> Annex 113. Brief that Lupe Andrade Salmón addressed to the Third Criminal Examining Judge, dated May 9, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>22</sup> Annex 2. Complaint filed by Juan del Granado Cosio, Mayor of the City of La Paz, with the Third Criminal Examining Judge on May 24, 2000. Attachment to the State's brief of June 14, 2004.

<sup>23</sup> Article 335 of the Penal Code: FRAUD: "Anyone who, in order to secure some undue financial gain for himself or a third party, intentionally and through the use of deceit and trickery, induces another person to act on the disposition of his assets, relying upon the misrepresentation and with the resulting injury or damage to said assets, shall face imprisonment for one to five years and a fine of sixty to two hundred days.

<sup>24</sup> Article 132 of the Penal Code: "CRIMINAL CONSPIRACY – A person who is part of a conspiracy of four or more persons whose purpose is to commit crime, shall face a punishment of six months to two years in prison or labor ranging from one month to a year. Any person who is a member of a juvenile gang formed to provoke disorder, commit scandals, engage in slander or any other crime shall face the same penalty."

<sup>25</sup> Annex 114. Expansion of the original order instituting preliminary proceedings, issued by the Third Criminal Examining Court on June 21, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>26</sup> Annex 116. Record of the hearing in which María Lupe Nina del Rosario Andrade Salmón gave her preliminary statement, August 2, 2000, before the Third Criminal Examining Court. Attachments that the petitioners brought from Bolivia, February 2004; Annex 22. Petition of *habeas corpus* that Maria Nina Lupe del Rosario Andrade de Salmón filed with the President and Members of the District Superior Court, dated August 1, 2000. Attachment to the petitioners' brief of March 30, 2001.

<sup>27</sup> Article 233 of the Code of Criminal Procedure: (*Prerequisites for pre-trial detention*).

Once formal charges have been brought, the judge may order the accused' pre-trial detention, upon a well-reasoned request from the prosecutor or from the victim, whether or not the latter is a plaintiff, provided the following conditions are present:

1. The existence of sufficient information to argue that the accused likely committed or aided and abetted in the commission of a punishable offense.
2. The existence of sufficient information indicating that the accused will be a flight risk or obstruct the inquiry into the facts.

<sup>28</sup> Annex 3. August 3, 2000 pre-trial detention order. Decision No. 238/2000. Attachment to the State's brief of June 14, 2004.

<sup>29</sup> Annex 4. August 3, 2000 warrant for pre-trial detention, signed by Alberto Costa Obregón, La Paz' Third Criminal Examining Judge. Attachment to the State's brief of June 14, 2004.

104. On August 2, 2000, Ms. Andrade's defense counsel filed a petition of *habeas corpus* against Alberto Costa Obregón, La Paz Third Criminal Examining Judge, based on the fact that the case had not been randomly assigned, and on the fact that the grounds set forth in articles 233 and 234<sup>30</sup> of the Code of Criminal Procedure were not present at the time the alleged victim's pre-trial detention was ordered.<sup>31</sup> On August 5, 2000, the First Chamber of La Paz District Superior Court declared that the petition of *habeas corpus* was inadmissible based on the fact that the Judge against whom the petition was filed had acted, "in issuing the expanded order of detention" within the framework established by Article 233 of the Code of Criminal Procedure and on the fact that by asserting prejudicial claims (the petition asking that the court order for an investigation be revoked), Ms. Andrade Salmón had acknowledged the judge's jurisdiction.<sup>32</sup> Ms. Andrade Salmón appealed this decision.<sup>33</sup>

105. On August 8, 2000, Ms. Andrade's defense counsel filed a petition seeking to have the order of pre-trial detention revoked. The petition was filed with the Third Criminal Examining Judge, and asked that he order an alternative to pre-trial detention, based on Article 240 of the Code of Criminal Procedure<sup>34</sup>

<sup>30</sup> Article 234.- (*Flight Risk*).

Flight risk shall be understood as any circumstance that allows one to reasonably infer that the accused will not stand trial but instead seek to evade justice. To determine whether a person accused of a crime poses a flight risk, the following factors shall be taken into special consideration:

1. The accused does not have his or her habitual domicile or residence, business or job in the country;
2. The accused has the means to leave the country or remain in hiding;
3. Evidence that the accused is making preparations to escape;
4. The accused' behavior during the proceedings or in a previous proceeding, to the extent that said behavior suggests the accused' determination not to stand trial;
5. The attitude that the accused voluntarily adopts with respect to the importance of the recoverable damages;
6. The fact that the person in question has been charged with the commission of another intentional criminal offense or has been sentenced to incarceration in a lower court ruling;
7. The fact that the person in question has been given an alternative outlet for an intentional criminal offense;
8. The fact that the accused is a repeat offender;
9. The fact that the accused is a member of criminal conspiracies or organized crime groups;
10. The accused poses a real danger to society or to the victim or to the plaintiff, and
11. Any other duly accredited circumstance that would give the court cause to reasonably believe that the accused is a flight risk.

<sup>31</sup> Annex 22. Petition of *habeas corpus* that Maria Nina Lupe del Rosario Andrade de Salmón filed with the President and Members of the District Superior Court, dated August 1, 2000. Attachment to the petitioners' brief of March 30, 2001.

<sup>32</sup> Annex 6. Constitutional Court, Constitutional Judgment No. 814/00-R in Case 2000-01461-04-RHC. Attachment to the State's brief of June 14, 2004.

<sup>33</sup> Annex 6. Constitutional Court, Constitutional Judgment No. 814/00-R in Case 2000-01461-04-RHC. Attachment to the State's brief of June 14, 2004.

<sup>34</sup> Article 240 of the Code of Criminal Procedure - (**Alternatives to Pre-trial detention**): When pre-trial detention is not the proper precautionary measure but the risk of flight or obstruction of the proceedings exists, the judge or the court may issue a well-reasoned decision ordering the use of one or more of the following alternative measures:

1. Household arrest, either in the accused' domicile or in another person's, with no surveillance or with the surveillance ordered by the court.  
If the accused is unable to provide for his or her own financial needs or those of his or her family, or if he or she is indigent, the judge may authorize the person to be absent from the home during working hours;
2. Supervised release, where the accused must appear regularly before the judge, court or other designated authority;
3. Prohibiting the person concerned from leaving the country, the place in which he or she resides or the area prescribed by the judge or the court, without the court's or judge's authorization, and conveying said order to the competent authorities;
4. Designating certain places as off-limits for the accused;
5. Prohibiting the accused from speaking with certain persons, provided the accused' right of defense is not adversely affected; and

[continues ...]

and because the conditions set forth in Article 233 of the Code of Criminal Procedure did not meet in the present case. Those conditions state that: 1) there must be sufficient information to argue that the accused likely committed or aided and abetted in the commission of a punishable offense; and 2) that there must be sufficient conviction that the accused will be a flight risk or obstruct the inquiry into the facts.<sup>35</sup> This petition was expanded with a brief dated August 11, 2000.<sup>36</sup> On August 29, 2000, Ms. Andrade was notified of the judge's decision dated August 18, 2000, in which the petition for an alternative to pre-trial detention was denied.<sup>37</sup> On August 26, 2000, Ms. Andrade appealed that decision based on Article 251<sup>38</sup> of the Code of Criminal Procedure, which the court agreed to hear on August 31, 2000.<sup>39</sup>

106. On August 31, 2000, the Constitutional Court issued an *habeas corpus* ruling (on its review of the decision that the First Criminal Chamber of the La Paz District Superior Court issued on August 5, 2000), in which it revoked the previous decision and declared that the use of alternatives to pre-trial detention was pertinent under Article 240 of the Code of Criminal Procedure. It set bail at 100,000 *bolivianos*.<sup>40</sup>

107. On September 1, 2000, Ms. Andrade requested that the court order her release that same day.<sup>41</sup> On September 6, 2000, the public hearing on alternative measures was held, which determined that the alternative measures would be as follows: 1) Ms. Andrade would be under supervised release, which meant that she would have to check in with the court every Monday at 9:00 a.m., to sign the corresponding book; and 2) financial bail was set at US\$ 100,000 or its equivalent in national currency.<sup>42</sup> At the end of the hearing, Ms. Andrade's defense counsel filed an appeal, which the court agreed would be heard. Therefore, the relevant case files were sent up to the Superior Court.<sup>43</sup> On October 2, 2000, the First Chamber of the Superior Court reviewed the appeal filed by Ms. Andrade and ordered Ms. Andrade's bail set at 80,000

[... continuation]

6. Release on one's personal recognizance or bail. The bail may be posted by the accused or by another person by depositing money, securities, collateral or a mortgage.

Once it is decided which of the above measures will be applied, the judge or court shall determine the conditions and rules that the accused must observe, with an express warning that the commission of another offense or failure to follow the rules imposed shall cause the alternative to be revoked and replaced by another, harsher measure, including pre-trial detention when called for; the victim may address the court.

<sup>35</sup> Annex 117. Brief that Maria Nina Lupe del Rosario Andrade Salmón addressed to the Third Criminal Examining Judge, dated August 8, 2000, concerning the order of pre-trial detention and requesting an alternative measure. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>36</sup> Annex 19. Brief that Coty Sonia Krsul Andrade addressed to the Chief Justice and Justices of the Constitutional Court in connection with the "Petition of *Habeas Corpus*" filed against the Third Criminal Examining Judge. Attachment to the petitioners' brief of May 11, 2001.

<sup>37</sup> Annex 118. Reasoned Order of August 18, 2000. Decision No. 264/2000 of the Capital's Third Criminal Examining Court. Attachments that the petitioners brought from Bolivia, February 2004; Annex 5. Brief that .María Nina Lupe del Rosario Andrade Salmón filed with the Third Criminal Examining Judge, dated August 30, 2000. **Attachment to the State's brief of June 14, 2004.**

<sup>38</sup> **Article 251 of the Code of Criminal Procedure – (Appeal): The decision ordering, modifying or rejecting the precautionary measures may be appealed within the space of seventy-two hours, although the appeal shall not suspend the order. Once the appeal is filed, the pertinent case files shall be sent up to the Superior Court within twenty-four hours. Without staging additional proceedings, the court shall hold a hearing within three days of receiving the case files. No subsequent appeal shall be permitted.**

<sup>39</sup> Annex 5. Brief that María Nina Lupe del Rosario Andrade Salmón filed with the Third Criminal Examining Judge on August 30, 2000. Attachment to the State's brief of June 14, 2004.

<sup>40</sup> Annex 6. Constitutional Court. Constitutional Judgment No. 814/00-R in Case File 2000-01461-04-RHC. Attachment to the State's brief of June 14, 2004.

<sup>41</sup> Annex 7. Brief addressed to the Third Criminal Examining Judge, dated September 1, 2000. Attachment to the State's brief of June 14, 2004.

<sup>42</sup> Annex 8. Record of the public hearing on alternatives to pre-trial detention, September 6, 2000. Attachment to the State's brief of June 14, 2004.

<sup>43</sup> Annex 8. Record of the public hearing on alternatives to pre-trial detention, September 6, 2000. Attachment to the State's brief of June 14, 2004.

*bolivianos* (Decision No. 522/2000).<sup>44</sup> On October 4, 2000, Ms. Andrade requested that an alternative be ordered instead of bail, arguing that she did not have 80,000 *bolivianos*. She therefore asked the court to allow her to post bail in the form of an automobile owned by a relative and to accept another person's bail bond, pursuant to Article 141(3) of the Code of Criminal Procedure.<sup>45</sup> The hearing to consider substituting monetary bail with an alternative form of bail was held on October 10, 2000, where the court agreed to accept the car instead of monetary bail.<sup>46</sup>

108. On October 11, 2000, Ms. Andrade petitioned the Judge of the Third Criminal Examining Court to issue the order, so that the vehicle offered and accepted as bail could be registered with the Santa Cruz de la Sierra District Traffic Office.<sup>47</sup> Ms. Andrade also asked the judge to issue her release warrant once the administrative bureaucratic procedures had been completed.<sup>48</sup>

109. On October 23, 2000, the Gader case was nullified until the case was randomly assigned, on the grounds that the case had not been legally instituted since the judge who was to hear the case was not selected at random. The case went to the Seventh Criminal Examining Court,<sup>49</sup> which refused to put a halt to Ms. Andrade Salmón's pre-trial detention, a decision that was appealed.<sup>50</sup>

110. On November 7, 2000, the Judge of La Paz Seventh Criminal Examining Court issued the order to investigate 12 persons, one of whom was Ms. Andrade, on the grounds that her conduct fit the conduct criminalized in Article 335 (fraud), article 132 (criminal conspiracy), and article 224 (mismanagement of public resources) of the Penal Code. The Judge set November 14, 2000 as the date on which Ms. Andrade's preliminary statement would be taken.<sup>51</sup> On November 8, 2000, then Mayor Juan del Granado Cossio filed a criminal complaint and became a civil party to the case being prosecuted against some 18 persons, among them Ms. Andrade, on the grounds that "as President of the City Council," she had allowed "payments to GADER SRL to continue." The court agreed to hear the complaint on November 10, 2000.<sup>52</sup>

111. On November 14, 2000, Ms. Andrade Salmon's preliminary statement was taken<sup>53</sup> and the hearing on precautionary measures was held.<sup>54</sup> At that hearing, the Seventh Criminal Examining Judge

<sup>44</sup> Annex 21. Constitutional Court. Constitutional Judgment No. 028/01-R, of January 16, 2001, in case file 2000-01-1964-05-RUC. Attachment to the petitioners' brief of May 11, 2001.

<sup>45</sup> Annex 9. Brief that María Nina Lupe del Rosario Andrade Salmón addressed to the Third Criminal Examining Judge, dated October 4, 2000. Attachment to the State's brief of June 14, 2004.

<sup>46</sup> Annex 119. Record of the hearing on substitution of bail, October 10, 2000, signed by Alberto Costa Obregón, Third Criminal Examining Judge. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>47</sup> Annex 10. Brief that María Nina Lupe del Rosario Andrade Salmón addressed to the Third Criminal Examining Judge, dated October 11, 2000. Attachment to the State's brief of June 14, 2004.

<sup>48</sup> Annex 10. Brief that María Nina Lupe del Rosario Andrade Salmón addressed to the Third Criminal Examining Judge, dated October 11, 2000. Attachment to the State's brief of June 14, 2004.

<sup>49</sup> Annex 15. Decision No. 339/03 of the Public Prosecutor of the Nation, Office of the La Paz District Attorney in Case No. 3870/03: Office of the Vice Minister of Justice. Attachment to the State's brief of May 2, 2003. During the processing of the case, the petitioners reported that on October 23, 2000, the Constitutional Court of Bolivia decided an appeal filed by another co-defendant and declared the process null and void until such time as the case was randomly assigned, since neither the principal case nor the precautionary measures had been randomly assigned.

<sup>50</sup> Annex 21. Constitutional Court. Constitutional Judgment No. 028/01-R of January 16, 2001, in case file 2000-01-1964-05-RUC. Attachment to the petitioners' brief of May 11, 2001.

<sup>51</sup> Annex 11. Court order instituting preliminary proceedings, dated November 7, 2000, signed by Dr. Constancio Alcón, Judge of La Paz' Seventh Criminal Examining Court. Attachment to the State's brief of June 14, 2004.

<sup>52</sup> Annex 12. Brief that Juan del Granado Cossio, Mayor of La Paz, addressed to the Seventh Criminal Examining Judge, dated November 8, 2000. Attachment to the State's brief of June 14, 2004.

<sup>53</sup> Annex 120. Record of the hearing in which María Nina Lupe del Rosario Andrade gave her preliminary statement. Attachments that the petitioners brought from Bolivia, February 2004.

ordered her pre-trial detention “because that was the order, given by my authority, during the public hearing held on precautionary measures.”<sup>55</sup> On November 15, 2000, Ms. Andrade appealed the pre-trial detention order, on the grounds that the August 31, 2000 Constitutional Court Judgment which granted her a writ of *habeas corpus* had been disregarded.<sup>56</sup> On December 1, 2000, on appeal the Second Criminal Chamber revoked the order of pre-trial detention and set bail at 300,000 *bolivianos*, rather than confirm the bail of 80,000 *bolivianos* ordered by the Superior Court, which had then been replaced to allow the alleged victim to put up a vehicle as bail.<sup>57</sup> On December 2, 2000, Ms. Maria Nina Lupe del Rosario Andrade Salmón filed a petition of *habeas corpus* with the District Superior Court, concerning the bail set at 300,000 *bolivianos*, as she did not have that money.<sup>58</sup> On December 4, 2000, the District Superior Court decided to give the petitioner 48 hours to correct the petition to conform to the requirements regarding justification of the petition,<sup>59</sup> which was done on December 5, 2000.<sup>60</sup> Also on December 4, 2000, the Seventh Criminal Examining Judge expanded the original order for investigation to add another 9 persons.<sup>61</sup> On December 7, 2000, the First Civil Chamber of the Superior Court of Justice denied the petition of *habeas corpus* filed.<sup>62</sup>

112. On December 14, 2000, Ms. Andrade’s defense counsel filed a petition to challenge the ruling of the First Civil Chamber of the Superior Court of Justice, which had denied the petition of *habeas corpus*. Ms. Andrade’s petition argued that it had been reliably established, with credible evidence, that Ms. Andrade was unable to meet the bail set, given her assets. It argued that by setting bail so high, Article 241 of the Code of Criminal Procedure had been violated.<sup>63</sup> On January 16, 2001, the Constitutional Court delivered its ruling with regard to the petition of *habeas corpus*.<sup>64</sup> In its ruling, the Constitutional Court held that the court that heard the petition of *habeas corpus* had not properly assessed the facts or the laws applicable in the present case. It therefore revoked the December 7, 2000 decision and ordered the court whose decision had been challenged to apply the alternatives that it deemed appropriate, “taking care not to order monetary bail that cannot be met.”<sup>65</sup> In arriving at this decision, the Constitutional Court took the following into account:

[... continuation]

<sup>54</sup> Annex 121. Record of the Public Hearing on Precautionary Measures, November 14, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>55</sup> Annex 122. Pre-trial detention warrant issued by the Seventh Criminal Examining Judge, Constancio Alcón Paco, dated November 14, 2000. Attachments that the petitioners brought from Bolivia, February 2004; Annex 15. Decision No.339/03 of the Office of the Public Prosecutor of the Nation, Office of the La Paz District Attorney in Case No. 3870/03, Plaintiff: Office of the Vice Minister of Justice. Attachment to the State’s brief of May 2, 2003. Attachments brought from Bolivia, February 2004.

<sup>56</sup> Annex 13. Brief addressed to the Judge of the Seventh Criminal Examining Court, date corrected, November 16, 2000. Attachment to the State’s brief of June 14, 2004.

<sup>57</sup> Annex 19. Brief through which Ms. María Nina Lupe del Rosario Andrade Salmón filed a petition of *habeas corpus* with the Chief Judge and Judges of the District Superior Court. Attachment to the petitioners’ brief of May 11, 2011.

<sup>58</sup> Annex 19. Brief through which Ms. María Nina Lupe del Rosario Andrade Salmón filed a petition of *habeas corpus* with the Chief Judge and Judges of the District Superior Court. Attachment to the petitioners’ brief of May 11, 2011.

<sup>59</sup> Annex 64. District Superior Court, First Civil Chamber, Petition of *habeas corpus*, December 4, 2000. Attachment to the petitioners’ brief of March 30, 2001.

<sup>60</sup> Annex 65. Brief that Maria Nina del Rosario Andrade Salmón addressed to the District Superior Court, “Presenting and Correcting Clarifications on the Petition of *Habeas Corpus*”, December 5, 2000. Attachment to the petitioners’ brief of March 30, 2001.

<sup>61</sup> Annex 23. Decision No. 314/2000 of the Capital’s Seventh Criminal Examining Court in the preliminary proceedings prosecuted against the La Paz Mayor’s Office, Germán Monrroy Chazarreta and others for the crime of fraud and other crimes. Attachment to the State’s brief of June 14, 2004.

<sup>62</sup> Annex 20. La Paz District Superior Court, First Civil Chamber, Petition of *Habeas Corpus*, December 7, 2000. Attachment to the petitioners’ brief of May 11, 2011.

<sup>63</sup> Annex 20. La Paz District Superior Court, First Civil Chamber, Petition of *Habeas Corpus*, December 7, 2000. Attachment to the petitioners’ brief of May 11, 2011.

<sup>64</sup> Annex 21. Constitutional Court. Constitutional Judgment No. 028/01-R of January 16, 2001, in case file 2000-01-1964-05-RUC. Attachment to the petitioners’ brief of May 11, 2001.

<sup>65</sup> Annex 21. Constitutional Court. Constitutional Judgment No. 028/01-R, of January 16, 2001, in case file 2000-01-1964-05-RUC. Attachment to the petitioners’ brief of May 11, 2001.



The petitioner is being prosecuted in a number of criminal cases in which she has demonstrated her willingness to stand trial and not to evade justice, as this Court recognized in its Judgment No. 814/00-R of August 31, 2000. Furthermore, it has been credibly shown that Maria Nina Lupe Andrade put up one of her properties as bail in another case being prosecuted against her; she has another property mortgaged. Furthermore, because she is incarcerated, she does not have any income that would enable her to get a loan to post the bail that the members of the court have set. These factors make it impossible for her to secure the release on bail that the court granted.<sup>66</sup>

113. On February 6, 2001, the Seventh Criminal Examining Court held the hearing on alternatives to pre-trial detention and ordered that: 1) Ms. Andrade was to check in weekly with the court on Saturdays at 9:00 a.m.; 2) she was to be confined to the jurisdiction of the court; 3) she was to post bail in the person of two financially solvent individuals with a known domicile in this city, which domicile shall be verified or proof thereof produced; and 4) she was to post financial bail of 40,000 *bolivianos*.<sup>67</sup> On February 9, 2001, the Judge of the Seventh Criminal Examining Court issued Ms. Andrade's release warrant.<sup>68</sup> Ms. Andrade was released on February 10, 2001.<sup>69</sup>

114. On August 24, 2002, La Paz Eighth Criminal Examining Court issued its final examining decision, which resulted in some 20 persons, one of whom was Ms. Andrade, were indicted.<sup>70</sup> The charge against Ms. Andrade was that during her administration, she had gone ahead with the payments to GADER SRL, which amounted to over US\$1,070,000, and had asked the city council to approve the GADER contract; at no time was a proper review done of the legal and technical supporting documents the mayor sent to the City Council.<sup>71</sup> That same day, the Eighth Criminal Examining Court issued the order binding 18 persons over for trial, one of whom was Ms. María Nina Lupe del Rosario Andrade Salmón, on the grounds that "her conduct fit the conduct criminalized in Article 153 (decisions that contravene the Constitution and the laws) and Article 224 (mismanagement of public resources) of the Criminal Code."<sup>72</sup>

115. On December 2, 2002, the criminal case was with the Sixth Criminal Trial Court.<sup>73</sup> On September 18, 2003, the Sixth Criminal Trial Court issued a decision granting Ms. Andrade's request to have

<sup>66</sup> Annex 21. Constitutional Court. Constitutional Judgment No. 028/01-R, of January 16, 2001, in case file 2000-01-1964-05-RUC. Attachment to the petitioners' brief of May 11, 2001.

<sup>67</sup> Annex 123. Record of the Hearing on Alternatives to Pre-trial detention, February 6, 2001, Seventh Criminal Examining Court. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>68</sup> Annex 124. Release warrant dated February 9, 2001. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>69</sup> Reported by the petitioners during the processing of the case with the IACHR.

<sup>70</sup> Annex 14. Decision No. 154/2002, Examining Court's Final Instruction of August 24, 2003, issued by the Capital's Eighth Criminal Examining Court (*Liquidador*) in the investigation that Juan del Granado Cosio, representing the Government of La Paz, sought against Germán Monroy and others for the crimes of fraud, use of a falsified instrument, contracts detrimental to the State, mismanagement of public resources, criminal conspiracy, dereliction of duty and cover-up. Attachment to the State's brief of June 14, 2004.

<sup>71</sup> Annex 14. Decision No. 154/2002, Examining Court's Final Instruction of August 24, 2003, issued by the Capital's Eighth Criminal Examining Court (*Liquidador*) in the investigation that Juan del Granado Cosio, representing the Government of La Paz, sought against Germán Monroy and others for the crimes of fraud, use of a falsified instrument, contracts detrimental to the State, mismanagement of public resources, criminal conspiracy, dereliction of duty and cover-up. Attachment to the State's brief of June 14, 2004.

<sup>72</sup> Annex 14. Decision No. 154/2002, Examining Court's Final Instruction of August 24, 2003, issued by the Capital's Eighth Criminal Examining Court (*Liquidador*) in the investigation that Juan del Granado Cosio, representing the Government of La Paz, sought against Germán Monroy and others for the crimes of fraud, use of a falsified instrument, contracts detrimental to the State, mismanagement of public resources, criminal conspiracy, dereliction of duty and cover-up. Attachment to the State's brief of June 14, 2004.

<sup>73</sup> Annex 2. Judicial Report addressed to the President of the Superior Court, Dr. Dora Villarroel de Lira, sent by the Sixth Criminal Trial Court, Alberto Mendoza Tejerina, concerning the Gader case, dated May 14, 2003. Attachment to the State's brief of June 18, 2003.

the order confining her to the court's jurisdiction lifted for 10 days to enable her to go the headquarters of the Inter-American Commission on Human Rights in Washington, D.C.<sup>74</sup>

116. On January 21, 2004, all the proceedings up through the final instruction decision (Decision No. 09/04) were declared null and void, whereupon the Sixth Criminal Trial Court (*Liquidador*) returned the case files to Judge Orlando Blacutt of the Eight Criminal Examining Court of La Paz, who recused himself based on the fact that one of the co-defendants had been making assertions against him; the case then went to Judge Rolando Sarmiento Torrez of the Ninth Criminal Examining Court, who also recused himself on the grounds that the Government of La Paz had filed a complaint against him with the Council of the Judiciary, La Paz District, for negligence in processing the case, whereupon the case finally went to the First Criminal Examining Court.<sup>75</sup>

117. On February 17, 2004, the First Criminal Examining Judge recused himself from further consideration of the case based on two demands for his recusal filed by two co-defendants, whereupon the case was sent to the Second Criminal Examining Court, which also recused itself in the wake of a motion filed by one of the co-defendants demanding that the court recuse itself; the case was then referred to the Third Criminal Examining Judge, who also declined to hear the case in an order of March 24, 2004, given the mutual enmity that existed between himself and the civil party.<sup>76</sup> The case then went to Judge Jaqueline Rada Arana with the Fifth Criminal Examining Court, who was challenged by the Government of La Paz on the grounds that she had presided over another case in which the City Government was a plaintiff (the Mallasa case); the case then went to the Sixth Criminal Examining Court and then to the Eighth Criminal Examining Judge legally substituting for the Ninth Criminal Examining Court. The Eighth Criminal Examining Judge disqualified himself, whereupon the case went to the Third Criminal Examining Court.<sup>77</sup> Judge Rolando Sarmiento of the Third Criminal Examining Court confirmed the final instruction decision, and referred the case by random selection to the Fourth Criminal Examining Court of El Alto<sup>78</sup> in December 2004.<sup>79</sup>

118. While the competent court to hear the case was being determined, on September 16, 2004 Ms. Andrade petitioned the Third Criminal Examining Judge (*Liquidador*) to have the criminal case time-barred, to order the record closed and declare the precautionary measures ordered against her time-barred. Her argument was that more than five years had passed since the start of the criminal case and, under the law in force at that time,<sup>80</sup> criminal cases could not continue for more than 5 years.<sup>81</sup> On August 13, 2005, the Fourth Criminal Examining Court of El Alto denied the petition to have the criminal action time-barred, based on Constitutional Court Judgment No. 101/2004 of September 14, 2004, and Constitutional Court Order No. 0079/04-ECA of September 29, 2004, which mandate the judge to determine whether the delay in justice was the fault of the Public Prosecutor's Office and/or the court, in which event the case should be declared time-barred. They also indicated that time-barring would not be applicable if the delay was caused by the action of

<sup>74</sup> Annex 36. Decision No. 86/03, Sixth Criminal Trial Court, delivered in the criminal case of *H.A.M. v. Gader* for the crime of fraud. Attachment to the State's brief of June 14, 2004.

<sup>75</sup> Annex 28. Fourth Criminal Examining Court of El Alto. Report, El Alto, June 3, 2005. Attachment to the petitioners' brief of March 26, 2006.

<sup>76</sup> Annex 28. Fourth Criminal Examining Court of El Alto. Report, El Alto, June 3, 2005. Attachment to the petitioners' brief of March 26, 2006.

<sup>77</sup> Annex 28. Fourth Criminal Examining Court of El Alto. Report, El Alto, June 3, 2005. Attachment to the petitioners' brief of March 26, 2006.

<sup>78</sup> Annex 28. Fourth Criminal Examining Court of El Alto. Report, El Alto, June 3, 2005. Attachment to the petitioners' brief of March 26, 2006.

<sup>79</sup> Annex 27. Report addressed to Dr. Ricardo Alarcón Pozo, President of the La Paz District Court, May 26, 2006. Attachment to the State's brief of July 20, 2006.

<sup>80</sup> They asserted Article Three from the Final Section on Transitory Provisions of the 1970 Law.

<sup>81</sup> Annex 29. Decision No. 05/2005, Fourth Criminal Examining Court of El Alto, *The Mayor of La Paz's Office v. Germán Monrroy Chazarreta et al.* for fraud and other crimes. Reasoned order, El Alto de La Paz, August 13, 2005. Attachment to the petitioners' brief of August 2, 2006.

the accused or defendant by abusing the use of the means of defense and/or a lack of diligence in her/his participation in the process, in a blatant refusal to subject her/him to the court's jurisdiction and competence. The Fourth Examining Court concluded that the case had started on March 23, 2000 and had been underway for over five years due to the behavior of the co-defendants, whose purpose was to cause an undue delay in the proceedings.<sup>82</sup>

119. On March 29, 2006, the case went to the Criminal Examining Judge (*Liquidador*) of La Paz District Superior Court and by May 26, 2006, "legalized copies of the appeal of the ruling denying the petition to have criminal action time-barred were before the Superior Court."<sup>83</sup>

120. On January 18, 2007, the Final Instruction Decision (Resolution No. 08/2007) was issued, in which the case against Ms. Andrade Salmón was provisionally dismissed on the grounds of insufficient evidence of culpability. The Court wrote that

...she had no contact with the Gader firm, much less participate in the Gader contracting process. Furthermore, through Executive Order No. 278/99 she had allegedly requested that the process through which the Gader firm was contracted be checked; the contract was then cleared with the City Council. Furthermore, the audit reports found no criminal liability on the part of the accused, who allegedly did not authorize any payment to the firm. Once the payments were discontinued as requested in Communication No. 095/99 of October 5, 1999, the checks had been reprogrammed to being cancel to the GADER firm. There is, therefore, insufficient evidence of the crimes being charged, namely fraud, criminal conspiracy and mismanagement of public resources,...

121. When the Government of La Paz appealed this ruling, the Third Criminal Chamber of the La Paz Judicial District Superior Court issued Decision No. 67/2009 of August 4, 2009, confirming the lower court's decision.<sup>85</sup> The Government of La Paz petitioned the court for an explanation and amendment of the earlier ruling, but that petition was denied in Decision No. 72/09 of August 20, 2009, notified on October 19, 2009.<sup>86</sup>

122. In 2010, through Decision No. 68/10, the case was reopened at the request of the Government of La Paz. On December 15, 2011, the Criminal Examining Court (*Liquidador*) of La Paz definitively dismissed the case against Ms. Andrade Salmón because the City Government had failed to produce new information to establish Ms. Andrade's authorship of these crimes.<sup>87</sup> From the information available it is unclear whether this is a final decision and not subject to appeal.

## 2. Street Lamps Case

<sup>82</sup> Annex 29. Decision No. 05/2005, Fourth Criminal Examining Court of El Alto, The Mayor of La Paz's Office v. Germán Monroy Chazarreta *et al.* for fraud and other crimes. Reasoned order, El Alto de La Paz, August 13, 2005. Attachment to the petitioners' brief of August 2, 2006.

<sup>83</sup> Annex 27. Report addressed to Dr. Ricardo Alarcón Pozo, President of the La Paz District Court, May 26, 2006. Attachment to the State's brief of July 20, 2006.

<sup>84</sup> Annex 104. Resolution 62/2011 of the Capital's Criminal Examining Court (*Liquidador*), dated December 15, 2011. Attachment to the petitioners' communication of February 14, 2011.

<sup>85</sup> Annex 104. Resolution 62/2011 of the Capital's Criminal Examining Court (*Liquidador*), dated December 15, 2011. Attachment to the petitioners' communication of February 14, 2011.

<sup>86</sup> Annex 104. Resolution 62/2011 of the Capital's Criminal Examining Court (*Liquidador*), dated December 15, 2011. Attachment to the petitioners' communication of February 14, 2011.

<sup>87</sup> Annex 104. Resolution 62/2011 of the Capital's Criminal Examining Court (*Liquidador*), dated December 15, 2011. Attachment to the petitioners' communication of February 14, 2011.

123. As background, the record of this case shows that a City Council resolution of May 13, 1998, authorized a trip by the City Executive (Mayor Germán Monroy) to Beijing, China, from May 15 to 26, 1998. No reason for the trip was given; the resolution states only that the trip was in response to a courteous invitation from the Beijing city government.<sup>88</sup> On June 18, 1998, a report on the trip went to the City Council of La Paz. The report stated that during the trip, a contract had been signed for the purchase of street lamps for the city of La Paz, street paving and construction of bridges.<sup>89</sup> The contract for the street lamps was with the firm XUZHO, a State-owned company with private participation, and that a mixed (commercial) line of credit from the Bank of China was involved.<sup>90</sup>

124. On June 29, 1998, the President of the City Council, Ms. Andrade Salmón, received a note from the Mayor enclosing the signed contract for the purchase of 80,000 street lamps. The then Mayor was asking for the City Council's clearance.<sup>91</sup> On August 3, 1998, the City Council approved the contract for the purchase of street lamps, through a resolution signed by Ms. Andrade, in her capacity as President of the City Council, and Mario Tapia Acosta, as Council Secretary.<sup>92</sup> However, the letter of transmittal from the Mayor to the Council seeking the latter's approval of the contract did not include an addendum that he had signed on May 19, 1998, with the representative of the XUZHO company in which the cost of the contract was increased by US\$ 2,260,000, to include spare parts and bulbs.<sup>93</sup>

125. On October 19, 1998, Mayor Germán Monroy asked that the contract's processing be ordered, which was done and a check was made out for the sum of US\$5,595,520.00 from the Government of La Paz to the XUZHO company. On November 18, 1998, the Vice Minister of the Treasury and Public Credit of the Treasury Ministry sent a note to the City Mayor's Office in which he advised that any budgetary change made by the Mayor's Office had to be approved by the City Council and that the debt ceiling had been reached.<sup>94</sup>

126. On December 22, 1999, the La Paz Sub Comptroller of Legal Services and the Departmental Manager submitted a report to the Sub Comptroller of Legal Services of the Comptroller General of the Republic, as the latter had requested a legal opinion concerning certain aspects of the contracting process and the contract signed with the Chinese firm XUZHO (Internal Communication No. GDC/CI-160/99). The report cited a number of illegalities and irregularities and established that some officials may bear criminal liability for those illegalities and irregularities.<sup>95</sup> On the matter of the possible culpability of Ms. Andrade, former President of the City Council and then Mayor of La Paz, the report stated that while she did sign City

<sup>88</sup> Annex 104. Resolution 62/2011 of the Capital's Criminal Examining Court (*Liquidador*), dated December 15, 2011. Attachment to the petitioners' communication of February 14, 2011.

<sup>89</sup> Annex 56. Resolution No. 123/2002, the Capital's First Criminal Examining Court (*Liquidador*), Final Instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003; Annex 67. Report and request from the Public Participation and Decentralization Commission in the following matter: complaint against former La Paz Mayor Germán Monroy Chazarreta, Honorable City Council Members Lupe Andrade Salmón, Julio Mantilla Cuellar, Cesar Augusto Sanchez Fuentes,... February 11, 2000. Attachment to the State's brief of July 14, 2004.

<sup>90</sup> Annex 67. Report and request from the Public Participation and Decentralization Commission in the following matter: complaint against former La Paz Mayor Germán Monroy Chazarreta, Honorable City Council Members Lupe Andrade Salmón, Julio Mantilla Cuellar, Cesar Augusto Sanchez Fuentes,... February 11, 2000. Attachment to the State's brief of July 14, 2004..

<sup>91</sup> Annex 56. Resolution No. 123/2002, the Capital's First Criminal Examining Court (*Liquidador*), Final Instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003.

<sup>92</sup> Annex 66. La Paz City Council Resolution No. 179/98 of August 3, 1998. Attachment to the State's brief of June 16, 2004; Annex 56. Resolution No. 123/2002, the Capital's First Criminal Examining Court (*Liquidador*). Final Instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003.

<sup>93</sup> Annex 69. GDL3/A523/D9, Report to the Under Comptroller of Legal Services of the Office of the Comptroller General of the Republic, dated December 22, 1999. Attachment to the State's brief of June 14, 2004.

<sup>94</sup> Annex 56. Resolution No. 123/2002, La Paz' First Criminal Examining Court (*Liquidador*), Final instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003.

<sup>95</sup> Annex 69.GDL3/A523/D9,Report to the Under Comptroller of Legal Services of the Office of the Comptroller General of the Republic, dated December 22, 1999. Attachment to the State's brief of June 14, 2004.

Resolution No. 179/98 of August 3, 1998, under which the contract was approved, under the Internal Rules of Procedure of the City Council of La Paz, its President did not vote except in the case of a tie (Article 33); under Article 37 of the Municipal Governments Act, the President of the City Council has the authority to “sign Council declarations, ordinances and resolutions and to ensure their compliance and execution.” Therefore, the report held that any culpability on her part would be the result of her having failed to request reports from the legal and technical commissions, as the Internal Rules of Procedure require.<sup>96</sup> The report recommended that because that omission was not punishable conduct under the Penal Code, the investigative arms of the Public Prosecutor’s Office should determine whether any criminal liability had been incurred, which meant that a complaint would have to be filed with the La Paz District Superior Court, since the “officials in question are entitled to a jurisdiction of privilege.”<sup>97</sup>

127. On December 24, 1999, the Office of the Comptroller General of the Republic filed an audit report on the purchase of 80,000 street lamps. The report found that the contract showed a number of irregularities: 1) a failure to comply with the legal provisions regarding the procurement and purchase of goods and services (the lack of documents showing the purchase costs, no certification as to the source of funds, the process was not the product of any competitive bidding, etc.); 2) the firm with which the contract was signed is not listed in the National Business Registration Service, no business could be transacted with it... and so on.<sup>98</sup> The report concludes that there was evidence of criminal responsibility in the case of more than 13 persons; where Ms. Lupe Andrade was concerned, the report suggested that the investigative arms of the Public Prosecutor’s Office should determine whether she was in any way accountable; they would suggest whether a criminal inquiry should be opened to investigate her for having signed Resolution No. 179/98.<sup>99</sup> The report recommended that the Comptroller’s Office become a plaintiff, since the highest executive authority in the Government of La Paz, Lupe Andrade Salmón, would be implicated in the report, in application of Article 44 of Law No. 1178, and that the complaint had to be filed with the La Paz District Superior Court since the officials in question “are entitled to a jurisdiction of privilege” under Article 265 of the Code of Criminal Procedure, in keeping with Article 103, authority 7 of the Judicial Organization Law.<sup>100</sup>

128. On February 11, 2000, the Public Participation and Decentralization Commission of the Chamber of Deputies issued a report on the investigation conducted into the “contract for street lamps for the city of La Paz,” based on Chamber Resolution No. 182/HME/98-99 of July 22, 1999 and Article 5 of Law No. 1469, Law on the Office of the Public Prosecutor, which states that the Legislative Branch, through its commissions, shall investigate complaints of crimes committed by authorities who are entitled to a jurisdiction of privilege and when the facts denounced affect the national interests. Once the investigation is completed, the case history is to be sent to the authorities that the law prescribes.<sup>101</sup> The above report details a number of different irregularities committed by officials in the Mayor’s Office and asks the District Superior

<sup>96</sup> Annex 69.GDL3/A523/D9, Report to the Under Comptroller of Legal Services of the Office of the Comptroller General of the Republic, dated December 22, 1999. Attachment to the State’s brief of June 14, 2004.

<sup>97</sup> Annex 69.GDL3/A523/D9, Report to the Under Comptroller of Legal Services of the Office of the Comptroller General of the Republic, dated December 22, 1999. Attachment to the State’s brief of June 14, 2004.

<sup>98</sup> Annex 56. Resolution No. 123/2002, the Capital’s First Criminal Examining Court (*Liquidador*), Final instruction, December 11, 2002. Attachment to the State’s brief of June 4, 2003.

<sup>99</sup> Annex 68. Report No. GL/EP15/L99 N1, Office of the Comptroller General of the Republic, La Paz City Government, Special Audit on the Purchase of 80,000 street lights from the XUZHOU Construction and Machinery Imports and Exports Group, Inc. of the People’s Republic of China under the 1998 Administration. Attachment to the State’s brief of June 14, 2004.

<sup>100</sup> Annex 68. Report No. GL/EP15/L99 N1, Office of the Comptroller General of the Republic, La Paz City Government, Special Audit on the Purchase of 80,000 street lights from the XUZHOU Construction and Machinery Imports and Exports Group, Inc. of the People’s Republic of China under the 1998 Administration. Attachment to the State’s brief of June 14, 2004.

<sup>101</sup> Annex 67. Report and request from the Public Participation and Decentralization Commission in the following matter: complaint against former La Paz Mayor Germán Monroy Chazarreta, Honorable City Council Members Lupe Andrade Salmón, Julio Mantilla Cuellar, Cesar Augusto Sanchez Fuentes,... February 11, 2000. Attachment to the State’s brief of July 14, 2004.

Court to order investigation of 10 persons, among them Ms. Lupe Andrade Salmón and other officials in the city government.<sup>102</sup>

129. On June 20, 2000, the Full Chamber of the District Superior Court issued Decision No. 60/2000 in the criminal case in a jurisdiction of privilege (“Caso Corte”), being prosecuted at the request of the Chamber of Deputies and the District Attorney’s Office against Germán Monroy Chazarreta, Lupe Andrade Salmón and others, for various crimes committed in the purchase of the street lamps manufactured in China, for which preliminary proceedings were initiated.<sup>103</sup>

130. On August 8, 2000, the Full Chamber of the District Superior Court issued Resolution No. 64/2000, in which it ordered that the case files be sent to the La Paz Criminal Examining Judge on duty, to move forward with the case.<sup>104</sup> On September 6, 2000, the original case files were referred, by random selection to the Examining Judge on duty.<sup>105</sup>

131. On October 3, 2000, the Prosecutor’s Office recommended that an investigation be ordered into Germán Monroy Chazarreta, Lupe Andrade Salmón and others for the crimes of contracts detrimental to the State’s interests and other crimes. On October 3, 2000, the Ninth Criminal Examining Judge ordered investigation of 10 persons, one of whom was Ms. Lupe Andrade Salmón, “for conduct that carried the penalty prescribed in Article 154 (dereliction of duty), 153 (a resolution that contravenes the Constitution and the law), read in conjunction with Article 23 (complicity), 146 (influence peddling), in relation to article 23 (complicity) of the Penal Code.”<sup>106</sup> On October 10, 2000, the Ninth Criminal Examining Judge issued a warrant to have Ms. Andrade summoned to appear in that court on October 17, 2000, to make her preliminary statement.<sup>107</sup>

132. On October 16, 2000, Mr. Juan del Granado Cosio, The Mayor of La Paz, filed a formal complaint with the Ninth Criminal Examining Judge for the purpose of becoming a civil party to the case being prosecuted against a number of persons, among them Ms. Andrade.<sup>108</sup>

133. On October 17, 2000, Ms. Andrade gave her preliminary statement<sup>109</sup> and a hearing was held on precautionary measures. There, the Ninth Criminal Examining Judge decided to order Ms. Andrade’s detention in the La Paz Women’s Prison (Centro de Orientación Femenina de Obrajes de La Paz), pursuant to

<sup>102</sup> Annex 67. Report and request from the Public Participation and Decentralization Commission in the following matter: complaint against former La Paz Mayor Germán Monroy Chazarreta, Honorable City Council Members Lupe Andrade Salmón, Julio Mantilla Cuellar, Cesar Augusto Sanchez Fuentes,... February 11, 2000. Attachment to the State’s brief of July 14, 2004.

<sup>103</sup> Annex 76. Brief from the District Superior Court to the Judge of the Second Criminal Trial Court (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>104</sup> Annex 76. Brief from the District Superior Court to the Judge of the Second Criminal Trial Court (*Liquidador*) in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>105</sup> Annex 76. Brief from the District Superior Court to the Judge of the Second Criminal Trial Court (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>106</sup> Annex 47. Resolution No. 508/2000 from the Judge of the Ninth Criminal Examining Court, dated October 3, 2000, Original Preliminary Order. Attachment to the State’s brief of June 4, 2003.

<sup>107</sup> Annex 48. Warrant to Appear in Court, signed by the Ninth Criminal Examining Judge, Dr. Daen Rolando Sarmiento. Attachment to the State’s brief of June 4, 2003.

<sup>108</sup> Annex 70. Brief from Juan del Granado Cossio, The Mayor of La Paz, to the Ninth Criminal Examining Judge, to file a formal complaint for the crimes specified therein, become a civil party, precautionary measures, domicile, October 16, 2000. Attachment to the State’s brief of June 14, 2004.

<sup>109</sup> Annex 49. La Paz District Superior Court, Ninth Criminal Examining Judge, October 17, 2000. Attachment to the State’s brief of June 4, 2003.

Article 233(1) of the Code of Criminal Procedure, as the Prosecutor had requested based on the fact that the statement made during the investigative proceedings revealed sufficient information to allow one to infer that Ms. Andrade had participated in the facts under investigation, “without elaborating upon the legal considerations.”<sup>110</sup> On October 17, 2000, the Ninth Criminal Examining Court issued the pre-trial detention order against Ms. Andrade<sup>111</sup> and ordered the Director of the *Obrajes* District Prison to take custody of her.<sup>112</sup> On October 18, 2000, Ms. Andrade appealed the pre-trial detention order based on Article 251 of the Code of Criminal Procedure.<sup>113</sup>

134. On October 25, 2000, Ms. Andrade Salmón filed a petition of *habeas corpus* with the First Chamber of the District Superior Court, on the following grounds: she had been mistakenly accused, without there being any evidence against her; the prerequisites that must be met to order pre-trial detention were not present in her case, as she was neither a flight risk nor did she pose a risk of obstruction of justice; also, the remedy she filed to appeal the pre-trial detention was not decided within the time period that the law prescribes.<sup>114</sup> On October 27, 2000, the First Chamber of the District Superior Court dismissed the petition of *habeas corpus* on the grounds that a petition of *habeas corpus* is not a substitute for an appeal, which was granted with remanded effects for failure to observe the proper formalities in processing the appeal.<sup>115</sup> Ms. Andrade was incarcerated in the *Obrajes* District Prison on October 27, 2000.<sup>116</sup>

135. On October 31, 2000, Ms. Andrade’s defense counsel asked the Constitutional Court to revoke the decision of the First Civil Chamber of the District Superior Court, which had denied the petition of *habeas corpus*. The grounds the defense counsel gave for requesting that the ruling be revoked was that Ms. Andrade’s prosecution was improper and illegal; that the court personnel’s failure to observe the formalities when processing the appeal had materially affected the case, since 8 days after the appeal was filed, the case files had still not been sent to the Superior Court to rectify the signatures, when the law prescribes a 24-hour period for referring the case files to the Superior Court; and the fact that Ms. Andrade was not a flight risk nor was there any information suggesting that she might obstruct the inquiry into the facts.<sup>117</sup>

136. On November 10, 2000, the Second Criminal Chamber of the District Superior Court decided the appeal filed by Ms. Andrade and overruled the decision made by the Ninth Criminal Examining Judge that had ordered Ms. Andrade’s pre-trial detention. The Second Criminal Chamber of the District Superior Court ordered a stop to the pre-trial detention, based on a request from the Public Prosecutor’s Office and in the light of the evidence presented by Ms. Andrade to show that she was not a flight risk nor would she obstruct the proceedings.<sup>118</sup> The Second Criminal Chamber ordered the following as alternatives to pre-trial

<sup>110</sup> Annex 50. Record of the Hearing on Precautionary Measures, signed by the Ninth Criminal Examining Judge. Attachment to the State’s brief of June 4, 2003.

<sup>111</sup> Annex 51. Resolution No. 539/2000, order of pre-trial detention dated October 17, 2000. Attachment to the State’s brief of June 4, 2003.

<sup>112</sup> Annex 52. Warrant for pre-trial detention as part of the preliminary proceedings that the public prosecutor’s office conducted against: Germán Manuel Monroy Chazarreta and others, for the crime of “document tampering” and other crimes, October 17, 2000, signed by the Ninth Criminal Examining Judge. Attachment to the State’s brief of June 4, 2003.

<sup>113</sup> Annex 60. Petition of *habeas corpus* that Ms. Andrade’s defense counsel filed on October 25, 2000 with the President and Members of the District Superior Court. Attachment to the petitioners’ brief of May 11, 2001.

<sup>114</sup> Annex 60. Petition of *habeas corpus* that Ms. Andrade’s defense counsel filed on October 25, 2000 with the President and Members of the District Superior Court. Attachment to the petitioners’ brief of May 11, 2001.

<sup>115</sup> Annex 61. Superior Court, First Civil Court, Resolution No. 625/2000. Petition of *habeas corpus*, October 27, 2000. Attachment to the petitioners’ brief of May 11, 2001.

<sup>116</sup> Annex 58. Report to Dr. Dora Villarroel de Lira, Dean Serving as President of the District Superior Court, from Dr. Hugo Michel Altamirano, Judge of the Eighth Criminal Trial Court (*Liquidador*), dated May 15, 2003. Attachment to the State’s brief of June 4, 2003.

<sup>117</sup> Annex 62. Challenge that Ms. Andrade’s defense counsel filed with the Constitutional Court as part of the petition of *habeas corpus* filed against La Paz’ Ninth Criminal Examining Judge. Attachment to the petitioners’ brief of May 11, 2001.

<sup>118</sup> Annex 54. Resolution No. 634/00 of the Second Criminal Chamber of the District Superior Court, November 10, 2000. Attachment to the State’s brief of June 4, 2003.

detention: 1) a supervised release system under which Ms. Andrade would have to make an appearance in the court of origin on Saturdays at 9:00 a.m. to sign the attendance book; 2) an order prohibiting her from leaving the department or the country, for what the court of origin must notify the Office of the Director of Immigration of that order; 3) presentation of the names of two persons who, under their own recognizance, would guarantee Ms. Andrade's appearance in court; 4) monetary bail set at 100,000 *bolivianos*.<sup>119</sup> On November 27, 2000, Ms. Andrade posted 100,000 *bolivianos* bail,<sup>120</sup> and gave the names and identifications numbers of two persons who, under their own recognizance, would guarantee her appearance for court. She asked the Ninth Criminal Examining Judge to issue the release warrant that same day.<sup>121</sup> On December 7, 2000, two persons became guarantors that Ms. Andrade would be present for every court proceeding.<sup>122</sup>

137. On December 5, 2000, Ms. Andrade Salmón presented a memorial posing a prejudicial and preliminary matter and asked that the preliminary investigative order be revoked, a request that was denied in Resolutions No. 432/2002 and No. 430/2000 of June 10, 2002.<sup>123</sup>

138. On December 11, 2000, the Constitutional Court decided the petition of *habeas corpus* and held that the judge against whom the appeal had been filed had committed an unlawful act by denying Ms. Andrade's request for alternatives to pre-trial detention, and by virtue of the fact that the prerequisites set out in Article 233 of Law No. 1970 for ordering pre-trial detention were not present in her case, thereby violating said Article 233.<sup>124</sup> In its ruling the Constitutional Court held that the fact that the pre-trial detention was revoked on appeal does not erase the illegal act committed by the authority against whom the appeal was filed. The Constitutional Court therefore revoked the October 27, 2000 decision delivered by the First Civil Chamber of La Paz Judicial District Superior Court, and granted the petition, without ordering Ms. Andrade's release, which the competent authority had already ordered on appeal.<sup>125</sup>

139. On December 18, 2000 and January 12, 2001, Ms. Andrade's defense counsel again asked the Ninth Criminal Examining Judge to issue the warrant for Ms. Andrade's release.<sup>126</sup> On January 10, 2001, the court order confining Ms. Andrade Salmón to the court's jurisdiction took effect.<sup>127</sup> On January 22, 2001, the

<sup>119</sup> Annex 54. Resolution No. 634/00 of the Second Criminal Chamber of the District Superior Court, November 10, 2000. Attachment to the State's brief of June 4, 2003.

<sup>120</sup> Annex 55. *Banco Unión S.A.*, Deposit of bail money, La Paz' Ninth Examining Court, November 27, 2000. Attachment to the State's brief of June 4, 2003.

<sup>121</sup> Annex 71. Brief addressed to the Ninth Criminal Examining Court, dated November 27, 2000. Attachment to the State's brief of June 14, 2004.

<sup>122</sup> Annex 16. Record of the hearing on the persons who, under their own recognizance, would guarantee Ms. Andrade's presence for the proceedings, dated December 7, 2000, signed by the Clerk of the Capital's Ninth Criminal Examining Court. Attachment to the State's brief of June 4, 2003.

<sup>123</sup> Annex 76. Brief of the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which he reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>124</sup> Annex 63. Constitutional Court, Constitutional Court Judgment No. 1160-R of December 11, 2000. Attachment to the petitioners' brief of May 11, 2001.

<sup>125</sup> Annex 63. Constitutional Court, Constitutional Court Judgment No. 1160-R of December 11, 2000. Attachment to the petitioners' brief of May 11, 2001.

<sup>126</sup> Annex 72. Brief that Maria Nina del Rosario Andrade Salmón addressed to the Ninth Criminal Examining Judge in which she requests issuance of the warrant for her release, dated December 18, 2000. Attachment to the State's brief of June 14, 2004; Annex 73. Brief that Maria Nina del Rosario Andrade Salmón addressed to the Ninth Criminal Examining Judge, presenting the order confining her to the court's jurisdiction and requesting release, January 11, 2001. Attachment to the State's brief of June 14, 2004.

<sup>127</sup> Annex 17. Reports, Operation, Management, Search Tools for Court Orders Confining Persons to the Court's Jurisdiction. Attachment to the State's brief of June 4, 2003.



Ninth Criminal Examining Judge issued the warrant for Ms. Andrade's release, as she had complied with the alternative measures ordered.<sup>128</sup>

140. In 2001, the Ninth Examining Court took the co-defendants' preliminary statements, held hearings on precautionary measures and decided various petitions and motions brought by the co-defendants. It also expanded the original order to investigate, so as to add other names.<sup>129</sup> On November 23, 2001, a hearing was held to reconstruct the City Council meeting.<sup>130</sup> In 2002, there were decided various motions and petitions brought by the defendants concerning prejudicial questions, petitions asking that the expanded orders instituting preliminary proceedings be revoked, motions to have the proceedings nullified, a recusal request and others.<sup>131</sup>

141. On December 11, 2002, the First Criminal Examining Court (*Liquidador*) of La Paz issued the final instruction decision ordering Ms. Andrade and 15 other persons to stand trial, and ordering provisional dismissal of the case against two other persons.<sup>132</sup> As for Ms. Andrade, the indictment states that she has not only committed the crimes listed in special audit report No. GL/EP15/L99N1 by omission, but by having attempted to use her position as President of the City Council of La Paz to claim that she had no vote and could only sign the resolution pursuant to Article 37(5) of the Municipal Governments Act, she has failed to discharge her duties under Article 19(10), 19(11), and 19(13), Article 37(6), and Article 108 of the Municipal Governments Act; furthermore, by her active participation in La Paz City Council session No. 98 held on June 18, 1998, where the contract for purchase of 80,000 street lamps was approved, with full knowledge of procedural irregularities surrounding the contract, her conduct fits crimes classified as ordinary criminal offenses.<sup>133</sup>

142. In 2003, the proceedings focused mainly on the statements made by the defendants; various petitions and motions they filed were decided.<sup>134</sup> Ms. Andrade Salmón, as co-defendant in the case, made her trial statement on June 4, 2003.<sup>135</sup> On July 10, 2003, the hearing to reconsider an amendment to Ms. Andrade's precautionary measures was suspended due to the absence of the Clerk of the Court, as she was on

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<sup>128</sup> Annex 18. Warrant for Provisional Release, Chamber Resolution No. 046/99-2000 from the Judicial Branch of the National, Council of the Judiciary. Attachment to the State's brief of June 4, 2003

<sup>129</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>130</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>131</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>132</sup> Annex 56. Resolution No. 123/2002, the Capital's First Criminal Examining Court (*Liquidador*). Final instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003.

<sup>133</sup> Annex 56. Resolution No. 123/2002, the Capital's First Criminal Examining Court (*Liquidador*). Final instruction, December 11, 2002. Attachment to the State's brief of June 4, 2003.

<sup>134</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>135</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

assignment.<sup>136</sup> On October 30, 2003, oral arguments were suspended owing to the absence of co-defendant Germán Monroy, who was excused from the proceedings for 60 days.<sup>137</sup>

143. On January 5, 2004, the hearing to begin oral arguments was suspended again, this time because the judge was on vacation.<sup>138</sup> On January 12, 2004, one of the co-defendants filed a motion to have the Ninth Criminal Examining Judge recuse himself, who agreed to recuse himself on January 13, 2004.<sup>139</sup> Subsequently, a motion was filed to have the proceedings declared null and void, based on Constitutional Court Judgment No. 400/2003-R, and asking that all the proceedings, up through and including the final instruction binding the defendants over for trial be revoked.<sup>140</sup> On March 25, 2004, the Eighth Criminal Trial Judge (*Liquidador*) nullified the final instruction of December 11, 2002.<sup>141</sup>

144. On January 21, 2005, the Second Criminal Trial Court (*Liquidador*) received a brief from Ms. Andrade in which she requested that criminal action be time-barred on the grounds that more than four and a half years had passed since the date on which she gave her preliminary statement, and the plenary phase had still not gotten underway. She also based her request on the fact that the proceedings were cancelled to the indictment decision because the procedural formalities had not been observed.<sup>142</sup> As grounds for her request to have criminal action time barred, Ms. Andrade cited the Third Transitory Provision of the Code of Criminal Procedure,<sup>143</sup> which states that effective May 31, 1999, all cases started under the former procedural system would have to be concluded within the space of five years or be time-barred; she also cited Constitutional Court judgment S.C. No. 77/2002 of August 29, 2002, which states that defendants must have the certainty that their case under the old system will last a reasonable period of time and not go on indefinitely; another source she cited was Constitutional Court Order No. 079/2004-ECA of September 29, 2004, which states that an action shall be time-barred when the delay in the proceedings is the fault of the court or the Public Prosecutor's Office and not the person on trial.<sup>144</sup>

<sup>136</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>137</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>138</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>139</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>140</sup> Annex 76. Brief from the District Superior Court to the Second Criminal Trial Court Judge (*Liquidador*), in which it reports on compliance with Constitutional Court Judgment No. 101/2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>141</sup> Annex 77. Resolution No. 103/2005 of the Second Trial Court (*Liquidador*), November 30, 2005. Information provided by the petitioners during the working meeting held at IACHR headquarters in November 2006 and sent to the State in a communication dated December 12, 2006.

<sup>142</sup> Annex 75. Brief that Ms. Maria Nina Lupe del Rosario Andrade Salmón filed with the Second Trial Judge (*Liquidador*), in which she again requests and states the grounds for time-barring the criminal case, dated November 6, 2004. Information presented by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State in a communication dated December 12, 2006.

<sup>143</sup> Third Transitory Provision of the Code of Criminal Procedure: DURATION OF THE CASE: "Cases that must be heard according to the previous system of criminal procedure, shall be completed within no more than five years, calculated from the date of publication of this Code. Judges shall, on their own initiative or at the request of a party, determine whether this time period has elapsed and, where appropriate, shall declare the criminal action time-barred and close the record on the case."

<sup>144</sup> Annex 75. Brief that Ms. Maria Nina Lupe del Rosario Andrade Salmón filed with the Second Criminal Trial Judge (*Liquidador*), in which she reiterates her well-reasoned request to have the criminal action declared time-barred, dated December 6, 2004. Information supplied by the petitioners during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

145. On November 30, 2005, after examining the procedural activity of the plaintiff, the co-defendants, the Public Prosecutor's Office and the court, the Second Criminal Trial Court (*Liquidador*) dismissed the motion that 5 co-defendants, including Ms. Andrade, had filed to have criminal action time-barred in this case.<sup>145</sup> The Second District Criminal Court held that the delay was in large part due to the conduct of the defendants and/or their attorneys, the complexity of the case and the number of co-defendants.<sup>146</sup>

146. On November 22, 2008, the Criminal Examining Court (*Liquidador*) of La Paz issued Resolution No. 89/2008 in which it ordered Mr. Germán Andrés Manuel Monrroy Chazarreta and other persons to stand trial, and ordered provisional dismissal of the case against Ms. Andrade Salmón and three other persons.<sup>147</sup> When the Government of La Paz appealed that ruling, on January 9, 2010, the Third Criminal Chamber of the La Paz Judicial District Superior Court issued its ruling in which it confirmed the lower court ruling.<sup>148</sup>

147. In February 2012, the petitioners reported that they were awaiting an appeal by the Mayor's Office. In March 2012, the State reported that on February 19, 2011, the Municipal Government of La Paz had requested that the case be reopened, and the court had agreed based on the plaintiff's reasoned request. Therefore, the initial indictment was issued, and thereafter the final instruction decision. The State reported that the accused appealed the final decision in the preliminary proceedings, and that the provisional dismissal was subsequently revoked. It notes that Ms. Andrade filed a petition for disqualification of the Judge of the First Criminal Trial Court (*Liquidador*) with the result that steps were then being taken to send the case files to the Judge of the Second Criminal Trial Court.

### **Complaints filed with the Council of the Judiciary**

148. On September 22, 2000, Ms. Andrade Salmón filed a complaint with the Council of the Judiciary<sup>149</sup> against the Third Criminal Examining Judge of La Paz, Alberto Costa Obregón, for failure to comply with and violation of the provisions of Law 1817 and the Penal Code; she also informed the Full Chamber of the Supreme Court of her complaint.<sup>150</sup> Thereafter, on December 14, 2000, Ms. Andrade Salmón filed a complaint with the Council of the Judiciary concerning the conduct of the officers of the court who, as of that date, had had some role in the Gader, Guaglio (Pensions), Street Lamps and Villa Ayacucho cases. She was asking for an investigation of these cases with a view to correcting the errors and to have a delegate appointed to examine the proceedings in the above-named cases.<sup>151</sup> Her main complaint in the Gader case was the failure to assign the case and the precautionary measures at random, the failure to comply with the

<sup>145</sup> Annex 77. Resolution No. 103/2005 of the Second Criminal Trial Court (*Liquidador*), November 30, 2005. Information provided by the petitioners during the working meeting held at IACHR headquarters in November 2006 and sent to the State in a communication dated December 12, 2006.

<sup>146</sup> Annex 77. Resolution No. 103/2005 of the Second Criminal Trial Court (*Liquidador*), November 30, 2005. Information provided by the petitioners during the working meeting held at IACHR headquarters in November 2006 and sent to the State in a communication dated December 12, 2006.

<sup>147</sup> Annex 101. Decision No. 111/2009 of the Third Criminal Chamber of the La Paz Judicial District Superior Court, dated January 9, 2010, and Annex 102. Decision No. 89/2008 of the Capital's Criminal Examining Court (*Liquidador*) dated November 22, 2008. Attachment to the petitioners' brief of February 14, 2012.

<sup>148</sup> Annex 101. Decision No. 111/2009 of the Third Criminal Chamber of the La Paz Judicial District Superior Court, dated January 9, 2010. Attachment to the petitioners' brief of February 14, 2012.

<sup>149</sup> Annex 106. Brief that Coty Krsul Andrade addressed to the President and Members of the Council of the Judiciary, dated September 27, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>150</sup> Annex 107. Brief that Coty Krsul Andrade addressed to the Full Chamber of the Supreme Court on September 27, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>151</sup> Annex 108. Brief by Coty Krsul Andrade to file a complaint with the Council of the Judiciary, received on December 14, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

prerequisites for ordering pre-trial detention in the present case, and the refusal of the Third Criminal Examining Judge to allow her defense attorneys to be present for her preliminary statement on November 14, 2000. In the case alleging fraud in contributions to the Pension Office, she alleged irregularities and misrepresentations. In the Street Lamps case, Ms. Andrade's main complaint was that during her preliminary statement on October 17, 2000, her attorneys were not permitted to assist her and were even threatened that they would be thrown out of the courtroom; the judge did not have Ms. Andrade read her preliminary statement and sign it until eight days later. She also complained that the judge ordered her pre-trial detention, ignoring the fact that the crimes charged did not warrant pre-trial detention. Finally, with regard to the Villa Ayacucho case, Ms. Andrade complained that she posted bail in the form of a piece of property valued US\$50,000, which was more than the monetary damages claimed by the civil party.

### **Complaint filed against the National Parliament's Human Rights Commission**

149. On November 21, 2000, the Human Rights Commission of the Chamber of Deputies received a complaint filed by Ms. Andrade Salmón over the fact that four criminal cases had been brought against her in connection with her municipal public service. In those cases, the charges were allegedly brought without any evidence, the constitutional principle of presumption of innocence had not been observed, and the provisions of the Code of Criminal Procedure regarding precautionary measures had not been applied.<sup>152</sup>

### **Proceedings prosecuted against the Third and Ninth Criminal Examining Judges for the crimes of deprivation of liberty and others, in connection with the Gader and Street Lamps cases.**

150. On August 20, 2003, an investigation was instituted against Mr. Alberto Costa Obregón, former Third Criminal Examining Judge, and Rolando Sarmiento Torres, Ninth Criminal Examining Judge, based on a complaint brought by the Office of the Vice Minister of Justice.<sup>153</sup> On November 27, 2003, the Public Prosecutor's Office brought formal charges against Constancio Alcón Paco, Seventh Criminal Examining Judge, for the crime of deprivation of liberty, decisions that contravene the Constitution and the laws, dereliction of duty, contempt of court decisions delivered in *habeas corpus* proceedings.<sup>154</sup> On June 7, 2004, the Prosecutor for the case, Dr. Daen Nigly Aguado Aranibar, filed an indictment against Alberto Costa Obregón, former Third Criminal Examining Judge, Constancio Alcón Paco, Third Criminal Examining Judge, and Rolando Sarmiento Torres, Ninth Criminal Examining Judge. The indictment was filed before the Judicial District Trial Court of La Paz, for alleged commission of the crimes of deprivation of liberty, decisions that contravene the Constitution and the laws, dereliction of duties, contempt of court rulings delivered in *habeas corpus* and constitutional *amparo* proceedings, provided for in articles 292(1) and (3), 153, 154 and 179 bis of the Penal Code, and requested that oral arguments be initiated before the La Paz Judicial District Trial Court.<sup>155</sup> Subsequently, January 4, 2005 was set as the date for the start of trial.<sup>156</sup> To date, the parties have not informed the Commission whether a final decision has been delivered in this case.

151. On January 29, 2004, the First Civil Chamber of the District Superior Court of La Paz, serving as a court of constitutional guarantees, ordered damages in connection with the petition of *habeas corpus* that María Nina Lupe del Rosario Andrade Salmón had brought against the Ninth Criminal Examining Judge, Dr.

<sup>152</sup> Annex 109. Brief addressed to the Chair and members of the National Parliament's Human Rights Commission. Received at the Human Rights Commission of the Chamber of Deputies on November 21, 2000. Attachments that the petitioners brought from Bolivia, February 2004.

<sup>153</sup> Annex 25. Brief that the Prosecutor on the case, Dr. Daen Nigly Aguado Aranibar, Office of the Public Prosecutor of the Nation, La Paz District Attorney's Office, to the President and Members of the La Paz Judicial District's Trial Court, dated June 7, 2004. Attachment to the petitioners' brief of November 26, 2004.

<sup>154</sup> Annex 15. Decision No. 339/03 of the Office of the Public Prosecutor of the Nation, District Attorney's Office La Paz-Bolivia, plaintiff: Office of the Vice Minister of Justice. Attachment to the State's brief of May 2, 2003.

<sup>155</sup> Annex 25. Brief that the Prosecutor on the case, Dr. Daen Nigly Aguado Aranibar, Office of the Public Prosecutor of the Nation, La Paz District Attorney's Office, to the President and Members of the La Paz Judicial District's Trial Court, dated June 7, 2004. Attachment to the petitioners' brief of November 26, 2004.

<sup>156</sup> Reported by the petitioners and not refuted by the State.

Rolando Sarmiento (the Street Lamps case). The court ordered the judge to pay the plaintiff damages in the amount of 2,079.50 *bolivianos*, based on the fact that on December 11, 2000, the Constitutional Court had revoked the *habeas corpus* decision that had denied the petition that Ms. Andrade had filed against the Ninth Criminal Examining Judge, Rolando Sarmiento. That decision to deny Ms. Andrade's petition of *habeas corpus* was delivered by the First Civil Chamber on October 27, 2000.<sup>157</sup> On February 18, 2004, the Constitutional Court confirmed the January 29, 2004 decision.<sup>158</sup>

### 3. Guaglio or Pensions Case (*Ham v. Monroy*)

152. On October 8, 1999, the Head of the Administrative Area of the Office of the Director General of Pensions of the Treasury Ministry sent a memorandum to Ms. Andrade Salmón, then Mayor of La Paz, in which she was informed that the Government of La Paz had failed to make a payment on a debit memo. She was also advised that if payment was not made, the court case to compel payment of the amount owed would go forward in order to recover the monies that should have been paid into the pension system, to avoid social problems that would be prejudicial to pensioners as the fund would be unable to provide a lifetime pension.<sup>159</sup>

153. On December 24, 1999, Ms. Andrade, then Mayor of La Paz, filed documents before the Financial Investigation Unit concerning 3,372,816.17 *bolivianos* that had allegedly been deposited into a private account; that money should have been deposited into the account of the Office of Pensions.<sup>160</sup> Mayor Andrade had allegedly already reported these facts to the Public Prosecutor's Office and to the Judicial Police. Four persons had been implicated (Adrian Quaglio, Guillermo Quiroga F., José Luís Fernández and Juan Enrique Penny Bardelli).<sup>161</sup>

154. On January 20, 2000, the Head of Financial Analysis of the Financial Investigations Unit presented a report in which he recommended to the Public Prosecutor's Office that, *inter alia*, the bank accounts of "SERAMEC S.R.L." and of other persons be frozen.<sup>162</sup> On February 2, 2000, the initial order was issued instituting preliminary proceedings against 18 persons; Ms. Andrade Salmón was not among them.<sup>163</sup> On February 17, 2000, La Paz' new Mayor, Juan del Granado Cossio, and the prosecutor for the case added more names to the list of suspects in the case, including Germán Monroy Chazarreta and Ms. Andrade Salmón, accusing them of dereliction of duty.<sup>164</sup>

155. On March 27, 2000, the Examining Judge said that he was not competent to take the case, because a number of the persons named as suspects were among the highest-ranking authorities of the Government of La Paz. The case, therefore, had to be sent up to the La Paz District Superior Court to be

<sup>157</sup> Annex 30. First Civil Chamber of the La Paz District Superior Court, Decision No. 005/2004 of January 29, 2004. Attachment to the State's brief of March 29, 2011.

<sup>158</sup> Annex 31. Constitutional Court Order 0004/2004-CDP of February 19, 2004, Justice writing for the court: Dr. Walter Raña Arana. Annex to the State's brief of March 29, 2011.

<sup>159</sup> Annex 34. Memorandum CITE DT 512/99 of October 8, 1999, signed by Dr. Gustavo Tejada Bravo, Head of the Administrative Area of the Legal Division of the Government of La Paz. Attachment to the State's brief of June 14, 2004.

<sup>160</sup> Annex 32. Confidential report UIF/AF/001/00 from the Financial Investigations Unit, La Paz, January 20, 2000. Attachment to the petitioners' brief of June 20, 2002.

<sup>161</sup> Annex 32. Confidential report UIF/AF/001/00 from the Financial Investigations Unit, La Paz, January 20, 2000. Attachment to the petitioners' brief of June 20, 2002.

<sup>162</sup> Annex 32. Confidential report UIF/AF/001/00 from the Financial Investigations Unit, La Paz, January 20, 2000. Attachment to the petitioners' brief of June 20, 2002.

<sup>163</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner's brief of February 14, 2012.

<sup>164</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner's brief of February 14, 2012.

prosecuted in a “jurisdiction of privilege” (Caso Corte).<sup>165</sup> Under Article 128 of Bolivia’s 1967 Constitution, jurisdictions of privilege were competent to “prosecute, either individually or collectively, mayors, municipal council members, sub-prefects, trial judges and prosecutors, agrarian judges and labor-court judges, as well as the other officials that the law determines, for any crimes they commit in the performance of their functions.”

156. On May 2, 2000, the Full Chamber of the District Superior Court of La Paz ordered that preliminary proceedings be instituted in a “jurisdiction of privilege” against Germán Monroy Chazarreta and María Nina Lupe del Rosario Andrade Salmón, who had previously been mayors of La Paz, for alleged dereliction of duty, mismanagement of public resources and fraud. Furthermore, “[i]n exercise of the principle that higher courts can supplant lower courts”, the District Superior Court of La Paz ordered that a case be brought in “a jurisdiction of privilege” against the persons named as suspects in the initial order instituting preliminary proceedings, dated February 2, for the crimes mentioned therein.”<sup>166</sup>

157. Subsequently, the provisions contained in articles 265 to 276 of the 1972 Code of Criminal Procedure (“jurisdiction of privilege”) were declared unconstitutional by virtue of Constitutional Court Judgment No. 38, of June 20, 2000, which held that mayors were not entitled to a “jurisdiction of privilege” and should be prosecuted according to regular criminal procedure, as there was no provision in the 1994 Constitution for this method of prosecution; it therefore ruled that the case files should be returned to the Full Chamber of the Judicial District Superior Court of La Paz.<sup>167</sup>

158. On May 1, 2002, the Eighth Criminal Examining Judge of La Paz issued a final instruction decision against 19 persons, one of whom was Ms. Andrade. She was accused of the offenses criminalized in the Penal Code at articles 154 (dereliction of duty) and 224 (mismanagement of public resources), because, “as mayor of the city, she had ordered payments and had signed off on those payments without meeting beforehand with officials from the Office of the Director General of Pensions, much less checking to make sure that the payments made were received by the office to which the checks were made out; also, the Fifth Labor and Social Security Court was presiding over a case instituted against her to compel payment.”<sup>168</sup> Ms. Andrade appealed the order, but as of May 20, 2003 the appeal had not been decided.<sup>169</sup>

159. By random selection, on October 25, 2002 the case went to the Fourth Criminal Trial Court (*Liquidador*). On November 11, 2002, the court took the preliminary statements of Ms. Andrade and 11 other

<sup>165</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner’s brief of February 14, 2012.

<sup>166</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner’s brief of February 14, 2012.

<sup>167</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner’s brief of February 14, 2012.

<sup>168</sup> Annex 33. La Paz District Superior Court, Report: Cases being prosecuted against Ms. María Nina Lupe del Rosario Andrade Salmón-Pension Office Case, sent to Dr. Dora Villarroel de Lira, Dean Serving as Acting President of the La Paz Superior Court, signed by Dr. Livia Molina Saravia, Fourth Criminal Trial Court Judge (*Liquidador*), May 20, 2003. Attachment to the State’s brief of June 4, 2003; Annex 35. Decision No. 097/2002. Final Order in the preliminary criminal proceedings conducted at the request of the Government of La Paz and the Office of the Director General of Pensions, against Adrian Guaglio Chiorino, Guillermo Quiroga Fernández, José Luis Fernández Betancourt, Mónica Gutierrez de Garafulic, Carlos Musset Salazar, Germán Andrés Monroy Chazarreta, María Nina Lupe del Rosario Andrade Salmón, Alfredo Levy Pacheco and others, for the crimes of forgery of public documents, document tampering, use of falsified instruments, criminal conspiracy, fraud, mismanagement of public resources, dereliction of duty, influence peddling, cover-up and anticipation or prolongation of functions, the Capital’s Eighth Criminal Examining Court (*Liquidador*). Attachment to the State’s brief of June 14, 2004.

<sup>169</sup> Annex 33. La Paz District Superior Court, Report: Cases being prosecuted against Ms. María Nina Lupe del Rosario Andrade Salmón-Pension Office Case, sent to Dr. Dora Villarroel de Lira, Dean Serving as Acting President of the La Paz Superior Court, signed by Dr. Livia Molina Saravia, Fourth Criminal Trial Court Judge (*Liquidador*), May 20, 2003. Attachment to the State’s brief of June 4, 2003.

persons. On May 13, 2003, a hearing was held where the evidence offered by the parties was made public.<sup>170</sup> As of May 20, 2003, there were 18 defendants, 5 of whom were in contempt of court.<sup>171</sup>

160. On January 28, 2004, the Fourth Criminal Trial Court (*Liquidador*) of La Paz held a decision in which Ms. Andrade Salmón was convicted and sentenced to three years in prison, for the crime of mismanagement of public resources (Article 224 of the Penal Code); she was also ordered to pay the State civil damages and costs, and was acquitted of the crime of dereliction of duty (Article 154 of the Penal Code).<sup>172</sup> The verdict in Ms. Andrade's case was based on the fact that during her term as Mayor in 1999, she had answered the letter CITE DT 512/99 from the Director of Pensions (falsified) without first apprising herself of the economic and financial circumstances and the accounting statements, and of the proceedings against her to compel payment, and without holding the necessary meetings to go over the situation with all her advisors "and not simply rubberstamp the conduct of her subordinates...; however, she was not deemed to be at fault in the administrative decision."<sup>173</sup>

161. The verdict was appealed by Ms. Andrade Salmón, ten other persons convicted in the case and the Government of La Paz.<sup>174</sup> The appeal that Ms. Andrade filed on February 4, 2004, was based on the fact that the exculpatory evidence had not been fully and credibly weighed.<sup>175</sup>

162. On September 16, 2004, Ms. Andrade petitioned the Second Criminal Chamber of the District Superior Court to declare the criminal action time-barred, to have the record in the case closed and to lift all the precautionary measures ordered against her in this case.<sup>176</sup> She repeated her request in a well-reasoned brief filed on December 6, 2004.<sup>177</sup> On December 19, 2004, the Second Criminal Chamber of the Superior Court issued a decision in which it ordered that the petitions asking that the case be declared time-barred be sent to the Prosecutor's Office pursuant to the Supreme Court's instruction to the effect that requests to have criminal action time-barred must be reviewed by the judge or court hearing the case.<sup>178</sup> On February 18, 2005, the Second Criminal Chamber of the Superior Court issued a decision in which it wrote that, under the

<sup>170</sup> Annex 33. La Paz District Superior Court, Report: Cases being prosecuted against Ms. María Nina Lupe del Rosario Andrade Salmón- Pension Office Case, sent to Dr. Dora Villarroel de Lira, Dean Serving as Acting President of the La Paz Superior Court, signed by Dr. Livia Molina Saravia, Fourth Criminal Trial Court Judge (*Liquidador*), May 20, 2003. Attachment to the State's brief of June 4, 2003.

<sup>171</sup> Annex 33. La Paz District Superior Court, Report: Cases being prosecuted against Ms. María Nina Lupe del Rosario Andrade Salmón- Pension Office Case, sent to Dr. Dora Villarroel de Lira, Dean Serving as Acting President of the La Paz Superior Court, signed by Dr. Livia Molina Saravia, Fourth Criminal Trial Court Judge (*Liquidador*), May 20, 2003. Attachment to the State's brief of June 4, 2003.

<sup>172</sup> Annex 37. Decision No. 12/2004 of the Capital's Fourth Criminal Trial Court (*Liquidador*) of January 28, 2004. Attachment to the petitioners' brief of September 23, 2004; Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner's brief of February 14, 2012.

<sup>173</sup> Annex 37. Decision No. 12/2004 of the Capital's Fourth Criminal Trial Court (*Liquidador*) of January 28, 2004. Attachment to the petitioners' brief of September 23, 2004; Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner's brief of February 14, 2012.

<sup>174</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006; Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioner's brief of February 14, 2012.

<sup>175</sup> Appeal that Maria Nina del Rosario Lupe Andrade Salmón filed with the Fourth Criminal Trial Court Judge (*Liquidador*) on February 5, 2004. Attachments brought from Bolivia, February 2004.

<sup>176</sup> Annex 40. Brief that Ms. Maria Nina Lupe del Rosario Andrade Salmón addressed to the members of the Second Criminal Chamber of the District Superior Court, in the criminal case brought by the Government of La Paz, called the Guaglio case, dated September 16, 2004. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>177</sup> Annex 41. Brief that Ms. Maria Nina Lupe del Rosario Andrade Salmón addressed to the President and members of the Second Criminal Chamber of the District Superior Court, dated December 6, 2004. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>178</sup> Annex 42. District Superior Court, December 19, 2004. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

Supreme Court's instructions and its subsequent Circular No. 27/04 of September 20, 2004, once a petition has been filed asking that criminal action be time-barred because the time period allowed under the Second Transitory Provision of Law No. 1970 has expired, that petition should be directly sent to the Prosecutor, without delay, for the Prosecutor to issue the corresponding determination, whereupon the competent court shall determine what the law requires.<sup>179</sup>

163. In March 2005, the District Attorney's Office of La Paz petitioned the President and members of the Second Criminal Chamber of the La Paz Judicial District Superior Court to deny the petitions requesting that these cases be time-barred, as they should go forward as the law prescribes. The District Attorney's Office based its request on the following points: 1) that the case had started on December 17, 1999, in response to a complaint filed, and a number of appeals challenging the conviction handed down on January 28, 2004 were pending; 2) the defendants had requested that the action be time-barred because the verdict had not been enforced within the period of five years from the start of the case, and to support their argument had cited Constitutional Court Judgment No. 101/04 of September 14, 2004;<sup>180</sup> 3) in the case it has been established that the defendants have engaged in systematic delaying tactics, by not making their preliminary statements at the appropriate time once the initial investigating decision had been issued, and causing cancellation of various hearings during the trial phase when they or their attorneys did not show up in court; 4) it has been established that a number of defendants were declared in contempt of court; and 5) according to the constitutional judgment the petitioners cite, when the defendants have been declared in contempt or have engaged in delaying tactics, the criminal action cannot be time-barred as it is the only legal means that society and the State have to defend themselves from organized crime.<sup>181</sup>

164. On April 15, 2005, one of the co-defendants asked that the case files be returned to the Prosecutor so that the latter might consider that co-defendant's request to have the criminal action time-barred.<sup>182</sup> All parties were notified of this measure on May 5, 2005, and the files were sent to the Prosecutor on May 10, 2005. On June 6, 2005, the Prosecutor denied the request to declare the criminal action time-barred and ordered notification of his decision. On July 22, 2005, following the court's vacation, the case was referred, by random selection, to Judge Armando Pinilla, who on August 2, 2005 recused himself on the grounds that he had had a role in the case when he served as Judge of the Eighth Criminal Trial Court. On September 8, 2005, his recusal was declared to be legal.<sup>183</sup>

165. On September 9, 2005, the request that Ms. Andrade and Mr. Valle filed to have the criminal action time-barred was denied. They were notified on September 12, 2005.<sup>184</sup> The District Superior Court denied Ms. Andrade's petition to have the criminal action time barred on the following grounds: 1) the record of the public hearing held to take the defendant's preliminary statement shows that the hearing was suspended because she was absent without cause; 2) the memorandum on file in which she requests an extension of the

<sup>179</sup> Annex 43. District Superior Court, February 18, 2005. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>180</sup> Annex 82. Constitutional Court Judgment 0101/2004 of September 14, 2004. Attachment to the petitioners' brief of September 23, 2004.

<sup>181</sup> Annex 44. Brief signed by Dr. Félix Santiago Ugarte M., District Attorney a.i., addressed to the President and Members of the Second Criminal Chamber of the La Paz Judicial District Superior Court, March 2004. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>182</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006.

<sup>183</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006.

<sup>184</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006.



date set for her statement at trial; 3) the motion filed to have the proceedings declared null and void; 5) the appeal she filed challenging the order to stand trial; and 6) the appeal she filed against her conviction.<sup>185</sup>

166. On September 15, 2005, Ms. Andrade filed an appeal challenging the earlier decision. Her appeal was denied by a decree of September 16, 2005, issued by an appeals court.<sup>186</sup>

167. On November 28, 2005, the Government of La Paz requested that the case be continued and asked that the rest of appellants be notified that their motion to have the case declared time-barred had been denied on April 19, 2004, so they could present their appeal.<sup>187</sup>

168. On September 11, 2006, the Second Criminal Chamber held a decision on the appeal challenging the January 28, 2004 conviction, and acquitted Ms. Andrade of any wrongdoing with respect to the mismanagement of public resources (Article 224 of the Penal Code); her sentence for that crime was annulled since her conviction was based solely on *prima facie* evidence.<sup>188</sup> Many of those convicted and the Government of La Paz filed cassation appeals to challenge that decision, which the Second Criminal Chamber of the Supreme Court decided on October 27, 2011.<sup>189</sup>

169. In its ruling of October 27, 2011, the Supreme Court held that Ms. Andrade Salmón was guilty of the crime of mismanagement of public resources, criminalized and a punishable offense under Article 224, part one, of the Penal Code. It sentenced her to three years in La Paz' *Obrajes* Prison, and ordered her to pay the State and the civil plaintiff civil damages and costs. In explaining the guilty verdict delivered in the case of Ms. Andrade Salmón, the Supreme Court reasoned as follows:

...In routing slip No 2673 of November 18, 1998, issued by former Mayor Germán Andrés Monroy Chazarreta, he orders that payments to the Office of the Director General of Pensions be made through an illegal procedure. That routing slip had a number of consequences, one of which was that the defendant ordered three payments of differing amounts to the firm called SERAMEC, without first thoroughly reviewing the supporting documentation explaining the outlays made with La Paz city funds and without compiling information to confirm the legality of the payment transactions, which was her duty as the highest executive authority of the Government of La Paz; furthermore, while confidential report UIF/AF/001/00 does not include Ms. Andrade on the list of persons responsible for siphoning funds, it is no less true that Civil Liability Report No. AEI<sup>o</sup>-026/2000, prepared by the Audit Commission of the La Paz Mayor's Office, found that a number of officials bore civil liability, one of whom was María Nina Lupe del Rosario Andrade Salmón. All these actions were detrimental to the assets of the city of La Paz, as a result of the mismanagement in city government...<sup>190</sup>

<sup>185</sup> Annex 45. Resolución No. 90/2005, Second Criminal Chamber of the District Superior Court, September 9, 2005. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>186</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006.

<sup>187</sup> Annex 38. La Paz District Superior Court, May 12, 2006, Report to Dr. Ricardo Alarcón Pozo, President of the District Superior Court, signed by Dr. Dora Villarroel de Lira, Member, Second Criminal Chamber, Superior Court, La Paz-Bolivia. Attachment to the State's brief of June 28, 2006.

<sup>188</sup> Annex 46. Resolution. No. 58/2006, District Superior Court, Second Criminal Chamber. Information that the petitioners supplied during the working meeting held at IACHR headquarters in November 2006 and forwarded to the State via a communication dated December 12, 2006.

<sup>189</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioners' brief of February 14, 2012.

<sup>190</sup> Annex 103. Supreme Order No. 266, Sucre 27/10/2011, Second Criminal Chamber. Attachment to the petitioners' brief of February 14, 2012.

170. In February 2012, the petitioners reported that the Supreme Court had overturned that ruling and had convicted Ms. Andrade for dereliction of duty and sentenced her to three years in prison. She was awaiting notification. The petitioners stated that they were going to request conditional suspension of the sentence, since it is less than or equivalent to three years. The State and the petitioners pointed out that the decision of October 27, 2011 is *res judicata*, and the sentence has not yet been enforced.

#### 4. Mendieta Case (Villa Ayacucho)

171. As background to this case, the record shows that by a resolution passed by the City Council of La Paz on December 13, 1994, the Government of La Paz awarded certain plots of land to seven persons. The plots were on lot 8 of block “Z” of the Ayachucho Urban Development Project in the Achumani zone and were awarded as compensation for land expropriated by that municipality.<sup>191</sup> On October 21, 1997, the Supreme Court (Supreme Court Order No. 231/97) confirmed a writ of constitutional *amparo* granted by the Supreme Court (Constitutional *Amparo* No. 305/96) which confirmed the writ of constitutional *amparo* that the La Paz District Supreme Court had granted (Constitutional *Amparo* 305/96) in the case that the seven persons brought against Ronal McLean Avaroa, The Mayor of La Paz at the time.<sup>192</sup> Under the writ of constitutional *amparo* granted in 1997, the City Mayor was required to give these 7 persons “level grading of the plots within block “Z” of Villa Ayacucho in the Achumani Zone of La Paz”, which an official in the Mayor’s Office did not do; as a result, these 7 people filed a complaint against the official in the Mayor’s Office for contempt of court orders.<sup>193</sup>

172. In the statements he made to the police, the official in question said that he had not complied with the writ of constitutional *amparo* because on November 25, 1997, Municipal Ordinance No. 250/97 was issued, Article 1 of which ordered compliance with the Supreme Court’s writ of constitutional *amparo* of October 21, 1997; Article 6 of the ordinance declared that area to be a “green zone” for reasons of necessity and public utility. He stated that later, on November 25, 1998, another ordinance (No. 151/98) was issued that confirmed the designation of the wooded area as a “green zone”; this ordinance was signed by Ms. Lupe Andrade Salmón in her capacity as President of the City Council of La Paz. On May 13, 1999, another ordinance (No. 032/99) was issued in which the previous ordinance was confirmed.<sup>194</sup>

173. On January 25, 2000, the order instituting preliminary proceedings was issued and named Ms. Andrade Salmón and others as suspects in the crime of contempt of decisions delivered in *Habeas Corpus* and Constitutional *Amparo* Proceedings (Article 179 bis of the Penal Code<sup>195</sup>) and in the crime of decisions that contravene the Constitution and the law (Article 153 of the Penal Code).<sup>196</sup> Ms. Andrade Salmón appealed the judge’s initial investigation decision, citing Article 169 of the Penal Code. She argued that the prejudicial question was the lack of jurisdiction of the judge against whom the appeal was filed; on the other hand, the preliminary issue was the absence of any criminal conduct and the lack of a justiciable matter. Her

<sup>191</sup> Annex 79. National Police Force, Office of the Departmental Director, Judicial Police, Report on the findings of the judicial police inquiries, case no. 05776/98 of December 17, 1999.

<sup>192</sup> Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge (*Liquidador*) to the Dean Serving as President of the District Superior Court, May 14, 2003. Attachment to the State’s brief of June 18, 2003.

<sup>193</sup> Annex 78. Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge (*Liquidador*) to the Dean Serving as President of the District Superior Court, May 14, 2003. Annex to the State’s brief of June 18, 2003.

<sup>194</sup> Annex 78. Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge (*Liquidador*) to the Dean Serving as President of the President of the District Superior Court, May 14, 2003. Annex to the State’s brief of June 18, 2003.

<sup>195</sup> Under this article, the authorities and private citizens have an obligation to comply with the judges and the courts. If not, they will be prosecuted for contempt of court. Constitutional Court Judgment No. 282/00 holds that where a common crime is involved, the “jurisdiction of privilege” does not apply, based on the procedure established in Article 265 of the Code of Criminal Procedure.

<sup>196</sup> Annex 80. Decision No. 43/2000 of the Third Criminal Examining Court, dated January 25, 2000. Attachment to the State’s brief of June 14, 2004.

appeal was denied, so that the order was given to take her preliminary statement.<sup>197</sup> On February 27, 2000, Ms. Andrade Salmón filed a petition of *Habeas Corpus* against La Paz' Third Criminal Examining Court on the grounds that she was being unduly and illegally prosecuted for the alleged crimes of contempt of decisions delivered in *habeas corpus* and constitutional *amparo* proceedings, which she was alleged to have committed when she was serving as President of the City Council and then as The Mayor of La Paz.<sup>198</sup>

174. In March 2000, her bail was set at 300,000 *bolivianos*. On appeal, the First Criminal Chamber of the District Superior Court revoked that bail and set it instead at 150,000 *bolivianos*.<sup>199</sup> Ms. Andrade then requested that the type of bail be changed and that she be allowed to post bail in the form of a plot of land and a Jeep vehicle. On March 27, 2000, the Constitutional Court issued its ruling on the petition of *habeas corpus* that Ms. Andrade had filed, dismissing it on the grounds that “the judge against whom the appeal was filed brought the case against the petitioner on the basis of Article 18(v) of the Constitution; under Article 34 of the Constitution, the crimes that this article addresses are to be prosecuted in the regular courts and no privilege or special jurisdiction can be claimed. The court also reasoned that the preliminary objections that the appellant asserted must be decided in the criminal case that the judge is hearing.”<sup>200</sup> In this ruling, the Constitutional Court held that under Article 18 of the Constitution, “public officials or private parties that defy court decisions shall, in the circumstances that this article stipulates and by order of the authority that heard the *Habeas Corpus* petition, be brought before the Criminal Judge to be prosecuted for compromising constitutional guarantees” and that, under Article 19(v) of the Constitution, this rule applies as well to cases of constitutional *amparo*.<sup>201</sup>

175. On April 27, 2000, Ms. Andrade Salmón gave her preliminary statement; at the hearing the court ordered that she should remain at liberty.<sup>202</sup> Later, the final instruction decision was issued calling for prosecution of four co-defendants; it was also expanded to add the name of Juan del Granado Cossio, Mayor of La Paz, who was charged with the same crime. The examining phase was closed in 2003.<sup>203</sup> In the meantime, on September 6, 2002, the judge hearing the case agreed to conciliation.<sup>204</sup> In 2003, the Government of La Paz complied with the constitutional *amparo* by agreeing to give the civil party the graded property established in its rulings.<sup>205</sup>

176. On September 14 and November 23, 2004, Ms. Andrade filed a petition to have the criminal action time-barred and the precautionary measures ordered in the present case lifted. Her requests were denied on September 30, 2005.<sup>206</sup> On July 20, 2005, the case was docketed with the Criminal Court (*Liquidador*), of the District Superior Court of La Paz,<sup>207</sup> and as of November 30, 2005 the status of the case

<sup>197</sup> Annex 81. Constitutional Court Judgment No. 282/00-R of March 27, 2000. Attachment to the petitioners' brief of September 23, 2004.

<sup>198</sup> Annex 81. Constitutional Court Judgment No. 282/00-R of March 27, 2000. Attachment to the petitioners' brief of September 23, 2004.

<sup>199</sup> Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge (*Liquidador*) to the Dean Serving as President of the District Superior Court, May 14, 2003. Attachment to the State's brief of June 18, 2003.

<sup>200</sup> Annex 81. Constitutional Court Judgment No. 282/00-R of March 27, 2000. Attachment to the petitioners' brief of September 23, 2004.

<sup>201</sup> Annex 81. Constitutional Court Judgment No. 282/00-R of March 27, 2000. Attachment to the petitioners' brief of September 23, 2004.

<sup>202</sup> Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge *Liquidador*, to the Dean Serving as President of the District Superior Court, May 14, 2003. Attachment to the State's brief of June 18, 2003.

<sup>203</sup> Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge *Liquidador*, to the Dean Serving as President of the District Superior Court, May 14, 2003. Attachment to the State's brief of June 18, 2003.

<sup>204</sup> Reported by the petitioners in the attachment to their brief of September 23, 2004. Sworn statement of September 17, 2004.

<sup>205</sup> Annex 78. Report No. 013/2003 of the Third Criminal Examining Judge *Liquidador*, to the Dean Serving as President of the District Superior Court, May 14, 2003. Attachment to the State's brief of June 18, 2003.

<sup>206</sup> Annex 89. Second Criminal Trial Court of the District Superior Court reports to the First Criminal Trial Court Judge (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>207</sup> Reported by the petitioners in the attachment to their brief of March 26, 2006.

was that Ms. Andrade had filed an appeal challenging the court's denial of her petition to have the case time-barred.<sup>208</sup>

177. On June 17, 2006, the First Criminal Chamber of the Superior Court of La Paz decided the appeal filed by Ms. Andrade to challenge the reasoned order of the Criminal Examining Judge (*Liquidador*) denying her request. As grounds for denying her appeal, the First Criminal Chamber of the Superior Court held that the protracted duration of her case was due to the delaying tactics that the defendants had employed, who "on several occasions requested that hearings for their preliminary statements be postponed"; that one of the defendants had not yet given a preliminary statement, and that every one of the defendants was filing motions, which then had to be decided before the proceedings on the main case could go forward.<sup>209</sup>

178. On August 15, 2007, the Criminal Examining Judge (*Liquidador*) issued Resolution No. 43/07 in which he decided to lift the order confining Ms. Andrade to the jurisdiction of the court, a precautionary measure ordered in her case. The plaintiffs appealed this decision on August 23, 2007.<sup>210</sup> Also on August 23, 2007, the court ordered provisional dismissal of the case against Ms. Andrade Salmón and other persons on the grounds that there was insufficient evidence of culpability. It also issued the order binding Juan del Granado Cossio over for trial.<sup>211</sup>

179. In February 2012, the petitioners indicated that the case was closed; in March 2012, the State indicated that the case had been time-barred.

## 6. Mallasa Case.

180. As background to the case, the record shows that Mallasa National Park was created by Supreme Decree No. 04309 of February 6, 1956, when the Mallasa Farm Workers Union ceded a piece of land to create a park in the area; thereafter, a commune representing 70 farmers, gifted 180 hectares in perpetuity, for creation of the great Mallasa National Park.<sup>212</sup> On February 18, 1972, Supreme Decree No. 10125 ordered that Mallasa National Park be conveyed to the City of La Paz, with all its uses, easements, and waters, to be used as a green area of the city, for recreation area and for sports facilities.<sup>213</sup> In 1997, then Mayor Gaby Candia de Mercado issued Municipal Resolution No. 563/97 approving the voluntary demarcation arrangement between the Government of La Paz and the Mallasa Farm Workers Union.<sup>214</sup>

181. During the administration of Mayor Germán Monroy Chazarreta, Resolution No. 418/98 was issued in which the Mallasa Farm Workers Union was given a number of hectares inside the park for urban

<sup>208</sup> Annex 90. Report from Dr. María Eugenia Iriarte Z., Case Prosecutor, to Dr. Jorge Gutiérrez Roque, District Attorney, dated November 30, 2005. Attachment to the petitioners' brief of August 2, 2006.

<sup>209</sup> Annex 83. Resolution No. 422/06, First Criminal Chamber of the La Paz Superior Court, June 17, 2006. Attachment to the State's brief of March 29, 2011.

<sup>210</sup> Annex 100. Appeal filed on August 23, 2007, against Decision No. 43/07 of August 15, 2007, sent by the Criminal Examining Judge (*Liquidador*). Attachment to the petitioners' communication of February 14, 2012.

<sup>211</sup> Annex 99. Decision 45/2007 of the Capital's Criminal Examining Court of the District Superior Court, Final Instruction dated August 23, 2007. Attachment to the petitioners' communication of February 14, 2012.

<sup>212</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006.

<sup>213</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006.

<sup>214</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006.

development; the planimetrics for the area were changed several times, and had the effect of reducing the surface area of Mallasa Park.<sup>215</sup>

182. On May 14, 1999, the Chairman of the Aranjuez Board's Neighborhood Association brought a complaint against the President of the Mallasa Farm Workers Union, claiming that the Union had taken their land.<sup>216</sup> On June 11, 1999, the City Council of La Paz presented inculpatory evidence, thereby formalizing the complaint and becoming a civil party to this case.<sup>217</sup> On July 19, 1999, two national deputies, Juan del Granado Cossio and Wilfredo Calzada Limache, filed a complaint against the former Mayor of La Paz.<sup>218</sup>

183. On January 10, 2000, the Prosecutor's Office expressed its opinion that an investigation should be opened with regard to former mayor Germán Monroy and others for the crimes of mismanagement of public resources, contracts prejudicial to the State's interests, decisions that contravene the Constitution and the laws, and dereliction of duty.<sup>219</sup> On September 8, 2000, the Police issued a report containing its findings from the inquiries conducted. On January 29, 2001, a criminal investigation was issued of former Mayor Germán Monroy Chazarreta and 35 other people, one of whom was Ms. Andrade Salmón.<sup>220</sup> Ms. María Nina Lupe del Rosario Andrade Salmón was charged with dereliction of duty and failure to file a complaint (articles 154 and 178 of the Penal Code, respectively).<sup>221</sup>

184. Between March and November 2001, 23 preliminary statements were taken; 29 were suspended because, in most cases, proper notification was not served or the prosecutor was absent; on 16 occasions they were suspended because the suspect or his or her attorneys did not attend or were absent for reasons of illness.<sup>222</sup> In that same period, March to November 2001, most of the suspects raised preliminary prejudicial issues requiring a special pronouncement from the court; one petition of constitutional *amparo* and appeals were filed challenging the order to investigate and the court-ordered precautionary measures. They availed themselves of the other remedies, which the competent courts then had to decide.<sup>223</sup> During 2002 and part of 2003, the Court continued to take statements and to decide motions and appeals filed by the suspects.<sup>224</sup> On April 9, 2001, Ms. Andrade Salmón filed a petition to have the original order instituting preliminary proceedings revoked, which was denied on August 13, 2002.<sup>225</sup>

<sup>215</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006..

<sup>216</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court Judge (*Liquidador*). Attachment to the petitioners' brief of March 26, 2006.

<sup>217</sup> Annex 89. Second Criminal Trial Court of the District Superior Court reports to the First Criminal Trial Court Judge (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>218</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court (*Liquidador*). Attachment to the petitioners' brief of March 26, 2006.

<sup>219</sup> Annex 89. Second Criminal Trial Court of the District Superior Court reports to the First Criminal Trial Court Judge (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>220</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court (*Liquidador*). Attachment to the petitioners' brief of March 26, 2006.

<sup>221</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006.

<sup>222</sup> Annex 89. Second Criminal Trial Court of the District Superior Court reports to the First Criminal Trial Court Judge (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>223</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court (*Liquidador*). Attachment to the petitioners' brief of March 26, 2006; Annex 89. Second Criminal Trial Court of the District Superior Court reports to the Judge of the First Criminal Trial Court (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>224</sup> Annex 89. Second Criminal Trial Court of the District Superior Court reports to the First Criminal Trial Court Judge (*Liquidador*), February 2005. Attachment to the State's brief of September 11, 2006.

<sup>225</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State's brief of June 16, 2003.

185. Subsequently, the Fourth Criminal Examining Judge recused himself from further consideration of the case. The case then went to the Fifth Criminal Examining Judge (*Liquidador*).<sup>226</sup> On November 7, 2002, Ms. Andrade Salmón made her preliminary statement. That same day, the court ordered that she could remain at liberty, with the following as alternatives to pre-trial detention: 1) she was to appear at the court every Saturday at 9:00 a.m. to sign the attendance book; 2) she was ordered confined to the jurisdiction of the court; and 3) she was ordered to designate a bail guarantor who was to be jointly and severally liable with her, and who was to guarantee her presence throughout the proceedings.<sup>227</sup> Ms. Andrade did not file an appeal to challenge these measures.<sup>228</sup>

186. On February 10, 2003, Ms. Andrade asked that the day designated by the court for her weekly appearance to sign the attendance book be changed, a request that was granted in a public hearing; the court ordered that she was to appear at the Fifth Criminal Examining Court (*Liquidador*) every 15 days; no change was made to the other measures.<sup>229</sup> Ms. Andrade also appealed the initial order instituting preliminary proceedings; that appeal was also granted.<sup>230</sup> Subsequently, Ms. Andrade asked that the court indicate which documents would have to be submitted to process the appeal; by an order of January 7, 2003, the Sixth Criminal Examining Judge indicated the relevant documents, which Ms. Andrade had not provided as of May 16, 2003, as she did not go to the court to have photocopies taken of the requested documents.<sup>231</sup> On April 2003, three of her co-defendants were declared in contempt.<sup>232</sup>

187. On June 11, 2003, the examining proceedings were declared closed; the indictment was filed on August 5, 2003. The final instruction decision in the preliminary proceedings was issued on September 8, 2003.<sup>233</sup> In the Final Instruction decision, the Fifth Criminal Examining Court (*Liquidador*) of La Paz ordered more than 20 individuals to stand trial; it also ordered that the case against 9 other persons, including Ms. Andrade, be provisionally dismissed, “[s]ince the body of evidence is not sufficient to reasonably assume that the persons in question are guilty of the crimes attributed to them.”<sup>234</sup> On September 11, 2003, the Government of La Paz appealed the Final Instruction. The appeal was granted with a retroactive effect, and all the proceedings to page 9274 inclusive were nullified.<sup>235</sup> On January 27, 2004, the case was docketed with the Eighth Criminal Trial Judge, who recused himself in response to a challenge filed by one of the defendants. With that, the case was docketed with the Ninth Criminal Trial Judge, who on April 20, 2004, recused himself from the case.<sup>236</sup>

188. On September 16, 2004, Ms. Andrade Salmón and other defendants requested that the criminal action be time-barred on the grounds that more than 5 years had passed since the case was first brought. The request was made citing Constitutional Court Judgment 0101/2004 of September 14, 2004, and

<sup>226</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>227</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>228</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>229</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>230</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>231</sup> Annex 86. May 16, 2003 report No. 001/2003 of the District Superior Court. Attachment to the State’s brief of June 16, 2003.

<sup>232</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006..

<sup>233</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First District Criminal Court (*Liquidador*). Attachment to the petitioners’ brief of March 26, 2006.

<sup>234</sup> Annex 84. Decision No. 166/03 of the La Paz Fifth Criminal Examining Judge (*Liquidador*), Final Instruction of September 8, 2003. Attachment to the brief of March 26, 2006.

<sup>235</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court (*Liquidador*). Attachment to the petitioners’ brief of March 26, 2006.

<sup>236</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal Trial Court (*Liquidador*). Attachment to the petitioners’ brief of March 26, 2006.

Constitutional Court Judgment No. 00792004-CA of September 29, 2004. The First Criminal Court (*Liquidador*) denied her request on April 19, 2005, on the grounds that the delay in the case was not the fault of the court; instead, it was attributable to the conduct of the defendants.<sup>237</sup> This decision was appealed and on February 6, 2006, the First Criminal Chamber of the District Superior Court upheld the decision of April 19, 2005.<sup>238</sup>

189. By May 15, 2006, all those standing trial had made their statements at trial and the public hearing opening oral arguments was pending. That hearing had not been held because rulings on the defendants' motions first had to be delivered.<sup>239</sup> On April 5, 2007, Ms. Andrade Salmón asked that the precautionary measures be cancelled, which in Interlocutory Decree No. 54.2007 of November 14, 2007 the court deemed to be a reasonable request and accordingly revoked the precautionary measures ordered in her case.<sup>240</sup> Nevertheless, the order confining Ms. Andrade Salmón to the court's jurisdiction was still in effect on October 30, 2008.<sup>241</sup>

190. On May 6, 2009, the inculpatory and exculpatory evidence in the case was being aired. From there, the case would move into the findings phase.<sup>242</sup>

191. In February 2012, the petitioners stated that the case against Ms. Andrade Salmón had been dismissed and had not been reopened as of that date. As there was no possibility that the case would be reopened, the dismissal of the case against her had become final.

## 6. Esin Case

192. As background to this case, the record shows that the Government of La Paz issued a call for public tenders, No. 2/97, for a contract for supervision of street sweeping and cleaning services and trash collection services in the city of La Paz. The contract for these services was awarded to the Empresa de Servicios Integrales ESIN S.R.L., with which the Mayor's Office signed a contract on October 17, 1997.<sup>243</sup> On June 2, 1998, the City Council of La Paz adopted a resolution in which it approved the agreement that ESIN and the Mayor of La Paz had signed on May 14, 1998, to terminate the contract based on the May 4, 1998 Report of the City Council's Financial and Legal Committees, which found that the legal procedures had not been observed when selecting, ranking and awarding the contract to ESIN, and on the financial analysis done by the Council's Financial Committee found that the contract had been very prejudicial to the City's finances because of the rate increase, the financial cost it represented, and the subsidies that the city had to pay.<sup>244</sup> Under that City Council resolution, the agreement to terminate the contract was reached as it was deemed to

<sup>237</sup> Annex 85. Decision No. 31/2005 of April 19, 2005, First Criminal District Court (*Liquidador*). Attachment to the petitioners' brief of March 26, 2006.

<sup>238</sup> Annex 91. Resolution No. 098/06, First Criminal Chamber of the District Superior Court, February 6, 2006. Attachment to the State's brief of March 29, 2011.

<sup>239</sup> Annex 88. La Paz' First Criminal Trial Court (*Liquidador*), Transmitting Report Cite: No. 185/05 to Dr. Ricardo Alarcón Pozo, President of the Superior Court, May 15, 2006. Attachment to the State's brief of July 20, 2006.

<sup>240</sup> Annex 92. District Superior Court. First District Civil Court legally substituting for the First Criminal Trial Court (*Liquidador*), dated May 6, 2009. Attachment to the State's brief of March 29, 2011.

<sup>241</sup> Annex 87. Ministry of Government, National Immigration Service, Office of the National Director of Immigration, Certificate No. 11689/8 dated October 30, 2008. Attachment to the petitioners' communication of February 14, 2012.

<sup>242</sup> Annex 92. District Superior Court. First District Civil Court legally substituting for the First Criminal Trial Court (*Liquidador*), dated May 6, 2009. Attachment to the State's brief of March 29, 2011.

<sup>243</sup> Annex 93. La Paz City Council Resolution, June 2, 1998, signed by Ms. Lupe Andrade Salmón, President of the City Council of La Paz, and Lic. Mario Tapia Acosta, Secretary of the City Council of La Paz. Attachment to the State's brief of June 14, 2004.

<sup>244</sup> Annex 93. La Paz City Council Resolution, June 2, 1998, signed by Ms. Lupe Andrade Salmón, President of the City Council of La Paz, and Lic. Mario Tapia Acosta, Secretary of the City Council of La Paz. Attachment to the State's brief of June 14, 2004.

be in the interests of both parties.<sup>245</sup> The City Council's resolution of June 2, 1998 was signed by Ms. Andrade Salmón, in her capacity as President of the City Council.<sup>246</sup>

193. On June 27, 2000, an internal audit report of the Government of La Paz was issued, which found evidence of criminal culpability in the case of former Mayor Germán Monroy Chazarreta, Ms. María Nine Lupe del Rosario Andrade Salmón, former President of the City Council, and three La Paz city government officials, who allegedly committed the crimes established in articles 154 (dereliction of duty) and 221 (contracts detrimental to the State's interests) of the Penal Code; it also found evidence of criminal wrongdoing on the part of ESIN's legal representative.<sup>247</sup> That audit report suggested that a criminal complaint be brought against the above-named persons, a suggestion supported by Legal Report ALAI N<sup>o</sup> 021/2000 of June 21, 2000, the report of the Office of the Manager of Legal Services dated September 29, 2000, and the Report of the Sub Comptroller of Legal Services, dated January 17, 2001. Based on the recommendations made in those reports, on January 31, 2001 the Auditing Manager and the Sub Comptroller of Internal Audits recommended to the then Mayor that the Legal Office be instructed to file a report with the Office of the Comptroller General of the Republic concerning the status of the criminal case against the above-named persons, in compliance with Article 27(g) of Law 1178, Article 45 of the Regulations approved by Supreme Decree No. 23215 and Article 66 of the Regulations approved in Supreme Decree No. 23318-A.<sup>248</sup>

194. On May 10, 2002, the First Criminal Examining Judge of the District Superior Court of La Paz ordered a criminal investigation of Maria Nina Lupe del Rosario Andrade Salmón and four other officials in the Mayor's Office as he found that their conduct fit the crimes established in articles 154 (dereliction of duty) and 221 (contracts prejudicial to the State's interests) of the Penal Code; he also ordered that the ESIN representative be investigated for other crimes.<sup>249</sup>

195. Formal charges<sup>250</sup> were brought on September 20, 2004 and by December 2005, oral arguments were being heard and the defendants were making their statements; the precautionary measures ordered for the defendants in this case did not include incarceration, so they were at liberty.<sup>251</sup> By June 26, 2006, the case had been sent to the La Paz District Attorney's Office for an opinion on the appeal filed against Resolution No. 26/2006 which ordered that all the proceedings be nullified until a new final instruction decision was issued. The case was awaiting the start of oral arguments.<sup>252</sup>

196. In February 2012, the petitioners reported that the case was closed after the charge brought against Ms. Andrade was rejected. However, they did not indicate when the case was closed or the reasons why the charges were thrown out. In March 2012, the State reported that Ms. Andrade Salmón is not involved in this case.

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<sup>245</sup> Annex 93. La Paz City Council Resolution, June 2, 1998, signed by Ms. Lupe Andrade Salmón, President of the City Council of La Paz, and Lic. Mario Tapia Acosta, Secretary of the City Council of La Paz. Attachment to the State's brief of June 14, 2004. Attachment to the State's brief of June 14, 2004.

<sup>246</sup> Annex 93. La Paz City Council Resolution, June 2, 1998, signed by Ms. Lupe Andrade Salmón, President of the City Council of La Paz, and Lic. Mario Tapia Acosta, Secretary of the City Council of La Paz. Attachment to the State's brief of June 14, 2004. .

<sup>247</sup> Annex 94. IL/R009/L00, Evaluation of Internal Audit Report No.AIE-046/2000 of the Government of La Paz, dated January 31, 2001. Attachment to the State's brief of June 14, 2004.

<sup>248</sup> Annex 94. IL/R009/L00, Evaluation of Internal Audit Report No.AIE-046/2000 of the Government of La Paz, dated January 31, 2001. Attachment to the State's brief of June 14, 2004

<sup>249</sup> Annex 95. Resolution No. 062/2002, dated May 10, 2002, signed by the First Criminal Examining Judge of the La Paz District Superior Court. Attachment to the State's brief of June 14, 2004.

<sup>250</sup> Annex 97. Report of Dr. René Arzabe Soruco, Case Prosecutor, to Dr. Jorge Gutiérrez Reque, La Paz District Attorney, November 23, 2005.. Annex to the petitioners' brief of March 26, 2006.

<sup>251</sup> Annex 98. Brief signed by Fernando Mita Barrientos, Case Prosecutor, La Paz District Attorney, to Mr. Jorge Gutierrez Roque, District Attorney, December 1, 2005. Attachment to the petitioners' brief of March 26, 2006.

<sup>252</sup> Annex 96. Report from Dr. Elías Fernando Ganam Cortez, La Paz District Attorney a.i., to Dr. Pedro Gareca Perales, Attorney General of the Republic, dated June 26, 2006. Attachment to the State's brief of March 26, 2006.



197. Regarding the negotiation process opened for a possible friendly settlement, the Commission observes that during the processing of this petition, the Commission placed itself at the parties' disposal with a view to reaching a friendly settlement of the matter pursuant to Article 48(1)(f) of the American Convention, and that on December 22, 2004, the parties signed a friendly settlement agreement.<sup>253</sup> Subsequently, on December 13, 2005, in view of the claims made by the parties during a working meeting held at IACHR headquarters on November 28, 2005, the Commission decided to continue processing the petition, on the understanding that at the request of either party, the IACHR could again place itself at their disposal to reach a friendly settlement.<sup>254</sup> The Commission notes that during the friendly settlement process, the State paid Ms. Andrade financial compensation,<sup>255</sup> although the Commission is unaware of the amount paid.

## V. LEGAL ANALYSIS

198. In keeping with the facts established and the parties' arguments, the Commission will analyze the case first from the standpoint of the right to personal liberty, and its interpretation in relation to other rights enshrined in the American Convention, such as the right to the presumption of innocence, the right to private property, and the right to movement and residence. It will then refer to the right to be tried within a reasonable time.

**A. The right to personal liberty of María Nina Lupe del Rosario Andrade Salmón (Article 7 of the American Convention) in relation to the right to the presumption of innocence (Article 8(2) of the American Convention), the right to private property (Article 21 of the American Convention), the right to movement and residence (Article 22 of the American Convention), and the general duty to respect and ensure the rights (Article 1(1) of the American Convention)**

199. Article 7 of the American Convention establishes, in the pertinent part:

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.
- ...
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.
- ...

200. Article 8(2) provides:

<sup>253</sup> See communication received from the petitioners on April 7, 2005.

<sup>254</sup> See communication from the Inter-American Commission on Human Rights dated December 13, 2005.

<sup>255</sup> See communication received from the petitioners on March 30, 2006.

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 ...

201. Article 1(1) of the American Convention indicates:

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

202. According to the Constitution in force at the time of the facts in Bolivia, the right to personal liberty was enshrined in the following terms, at Article 9:

No one may be detained, arrested, or imprisoned except in those cases and in keeping with the forms established by law; for the respective order to be carried out, it must emanate from a competent authority and be made in writing.

203. As regards the guarantees that should be upheld in a detention, the Inter-American Court has established:

Article 7 of the American Convention ... contains two types of regulations, highly differentiated, one general and one 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 (Art. 7(2)) or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)), to judicial control of the deprivation of liberty (Art. 7(5)), and to contest the lawfulness of the arrest (Art. 7(6)). Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.<sup>256</sup>

204. The Commission has indicated that Article 7 of the American Convention enshrines the guarantees regarding the right to liberty that the states parties have undertaken to respect and ensure. Any deprivation of liberty should be carried out in keeping with the pre-established laws, and “No one shall be subject to arbitrary arrest or imprisonment.” In this regard, a person detained should be informed of the reason for his or her detention and notified immediately of any charge against him or her, and be brought immediately before a judge. In addition, every person detained must be tried within a reasonable period or be released while the proceeding continues. In addition, any person deprived of liberty has the right to a judicial remedy and to obtain, without delay, a determination of the legality of the detention.<sup>257</sup> The Human Rights Committee of the United Nations has indicated that “remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.”<sup>258</sup>

<sup>256</sup> I/A Court H.R., *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220. Para. 79. Citing *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 54; and *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 116.

<sup>257</sup> IACHR. Report on the Situation of Human Rights in Ecuador. 1997. OEA/Ser.L/V/II.96. Doc. 10 rev. 1. April 24, 1997. Chapter VII.

<sup>258</sup> Case of Van Alphen v. The Netherlands, communication No. 305/1998, of July 23, 1990.

205. The Commission recalls that based on “the presumption of innocence, within the framework of a criminal process, the defendant shall remain free, as a rule.”<sup>259</sup>

206. In the instant case, the Commission has considered it as established that Ms. Andrade Salmón was deprived of liberty from August 3, 2000, by order of the Third Criminal Examining Judge in the proceeding known as the “*Gader case*,” until February 10, 2001, the date on which she left prison after a release order was issued on February 9, 2001, and that she remained in pre-trial detention during this time period at the Center for Women’s Orientation (Centro de Orientación Femenina), and subsequently at the prison known as the Penitenciaría Distrital at Obrajes. The Commission has also considered it established that within the proceeding known as “*Street Lamps*,” the Ninth Criminal Examining Judge issued a pre-trial detention order against Ms. Andrade Salmón on October 17, 2000 and issued a release order on January 22, 2001.

207. The petitioners allege that the State of Bolivia, on ignoring the prerequisites for pre-trial detention established in the Code of Criminal Procedure and on ignoring the judgments of the Constitutional Court that declared that the incarceration of Ms. Andrade Salmón was illegal violated Articles 7(2), 7(3), and 7(6) of the American Convention. In addition, the petitioners allege that given that on October 23, 2000, the Constitutional Court declared the nullity of the *Gader* proceeding until such time as the case was randomly assigned, i.e. prior to the issuance of the pre-trial detention order, the detention of Ms. Andrade lacked any legal basis until November 14, 2000, the date on which the Seventh Criminal Examining Judge issued the pre-trial detention order against Ms. Andrade, despite the existence of the Constitutional Court judgment of August 31, 2000, which found that alternative measures to pre-trial detention may be decreed.

208. The State indicates that the right to personal liberty was enshrined in Article 9 of the 1994 Constitution, and that this right may only be restricted exceptionally: (1) in those cases and in keeping with the procedures established by law; (2) with an order from the competent authority; and (3) that the order was made in writing. The State alleges that the Constitutional Court, in due course, gave priority attention to the rights claimed by Ms. Andrade Salmón through the writs of habeas corpus filed against decisions of judicial authorities characterized as improper or illegal, which were ruled in her favor in a timely, effective, and impartial manner.

#### **A.1 Articles 7(2) and 7(3) of the American Convention in relation to Articles 8(2) and 1(1) of the same instrument**

209. As regards Article 7(2) of the Convention, the Inter-American Court has indicated that it “recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law.”<sup>260</sup> In addition, it has said: “The legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and “beforehand,” the “reasons” and “conditions” for the deprivation of physical liberty. Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention.”<sup>261</sup>

210. Article 7(3) of the Convention provides: “No one shall be subject to arbitrary arrest or imprisonment.” Specifically, the Inter-American Court has stated that in relation to Article 7(2) and 7(3) of the Convention:

<sup>259</sup> IACHR, Report No. 86/09, Case 12,553 Jorge, José, and Dante Peirano Basso v. Eastern Republic of Uruguay, August 6, 2009, para. 69.

<sup>260</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Para. 56.

<sup>261</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñiquez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. Para. 57.

[a]ccording to the first of these regulatory provisions [Article 7(2) of the Convention], no one shall be deprived of his personal liberty except for reasons, cases or circumstances specifically established by law (material aspect) but, also, under strict conditions established beforehand by law (formal aspect). In the second provision [Article 7(2) of the Convention], we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that – although qualified as legal – may be considered incompatible with respect for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion.<sup>262</sup>

211. The European Court of Human Rights has established that while any detention must be carried out in keeping with the procedures established in the domestic law, it is also necessary for the domestic law, the applicable procedures, and the corresponding express or tacit general principles to be themselves compatible with the Convention.<sup>263</sup>

212. The Human Rights Committee has specifically indicated that one should not equate the concept of “arbitrariness” with that of “against the law,” but rather it should be interpreted more broadly so as to include elements of inappropriateness, injustice, and lack of predictability as well as the principle of “due process of law.” This means that the pre-trial detention following a lawful detention must be not only lawful but also reasonable in all circumstances.<sup>264</sup>

213. In summary, it is not sufficient for every cause of deprivation or restriction of the right to liberty be enshrined in the law; it is also necessary that said law and its application respect that requirements outlined below, for the purposes of such a measure not to be arbitrary: (i) that the aim of the measures that deprive or restrict liberty be compatible with the Convention. Along those lines, the Inter-American Court has recognized as legitimate aims ensuring that the accused will not impede the development of the proceeding or elude the action of the justice system<sup>265</sup>; (ii) that the means adopted be suitable for pursuing the aim sought; (iii) that they be necessary, in the sense of being absolutely essential for attaining the aim sought, and that there not be an less restrictive measure with respect to the right affected among all those that are equally suitable for attaining the proposed objective. For this reason the Court has indicated that the right to personal liberty presupposes that any limitation to it must be exceptional<sup>266</sup>; and (iv) that the means be strictly proportional<sup>267</sup> such that the sacrifice inherent in the restriction of the right to liberty not be exaggerated or disproportionate vis-à-vis to advantages obtained by that restriction and the attainment of the aim sought. Any restriction of liberty that does not contain sufficient motivation that would make it possible to evaluate whether it is consistent with the conditions indicated will be arbitrary and, therefore, will violate Article 7(3) of the Convention.<sup>268</sup>

<sup>262</sup> I/A Court H.R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 57; I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 98; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 83.

<sup>263</sup> See *ECHR, Case of Kemmache v. France*, Judgment of 24 November 1994, para. 37.

<sup>264</sup> Human Rights Committee, *Case of Albert Womah Mukong v. Cameroun*, (458/1991), July 21, 1994, UN Doc. CCPR/C/51/D/458/1991, para. 9.8.

<sup>265</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 93; *Case of Acosta Calderón v. Ecuador*. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 111.

<sup>266</sup> I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 197, and *Case of García Asto and Ramírez Rojas v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 106.

<sup>267</sup> I/A Court H.R. *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 2, 2004. Series C No. 112, para. 228.

<sup>268</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 93.

214. Based on the foregoing, the Commission will now analyze whether the pre-trial detention orders issued against Ms. Andrade Salmón in the *Gader* and *Street Lamps* matters, and their maintenance, were done in keeping with the law and whether or not they were arbitrary.

215. The Commission observes, as per the facts proven, that Ms. Andrade Salmón's detention was ordered in the *Gader* proceeding by the Third Criminal Examining Judge of La Paz on August 3, 2000, based solely on the requirement established in the first section of Article 233 of the Code of Criminal Procedure<sup>269</sup>, though this article also required concurrence of the requirements established in paragraph 2 of the same article, and was carried out "without entering into further legal considerations," considering that criminal proceedings had been instituted against Ms. Andrade Salmón by Resolution No. 215/2000, as her conduct was criminalized in Articles 335 (fraud [*estafa*]) and 132 (criminal association [*asociación delictuosa*]) of the Criminal Code. Along those lines, the Commission notes that the pre-trial detention order issued November 14, 2000 by the Seventh Criminal Examining Judge in the *Gader* case (after annulling the proceeding up to the initial order of investigation) omitted any type of foundation, noting "as it is so ordered by my Authority by Order of Act of Public Hearing for considering precautionary measures."

216. According to Article 233 of the Code of Criminal Procedure:

Once formal charges have been brought, the judge may order the accused's pre-trial detention, upon a well-reasoned request from the prosecutor or from the victim, whether or not the latter is a plaintiff, provided the following conditions are present:

1. The existence of sufficient information to argue that the accused likely committed or aided and abetted in the commission of a punishable offense.
2. The existence of sufficient information indicating that the accused will be a flight risk or obstruct the inquiry into the facts.<sup>270</sup>

217. In relation to the second requirement established at Article 233 of the Code of Criminal Procedure, that is, weighing the existence of a danger of flight or obstruction of justice, the Commission notes that Articles 234 and 235 of the Code of Criminal Procedure establish the elements that the judge should consider when determining their existence in the specific case:

*Article 234 - (Flight Risk).*

Flight risk shall be understood as any circumstance that allows one to reasonably infer that the accused will not stand trial but instead seek to evade justice. To determine whether a person accused of a crime poses a flight risk, the following factors shall be taken into special consideration:

1. The accused does not have his or her habitual domicile or residence, business or job in the country;
2. The accused has the means to leave the country or remain in hiding;
3. Evidence that the accused is making preparations to escape;
4. The accused's behavior during the proceedings or in a previous proceeding, to the extent that said behavior suggests the accused's determination not to stand trial;
5. The attitude that the accused voluntarily adopts with respect to the importance of the recoverable damages;
6. The fact that the person in question has been charged with the commission of another intentional criminal offense or has been sentenced to incarceration in a lower court ruling;
7. The fact that the person in question has been given an alternative outlet for an intentional criminal offense;

<sup>269</sup> Code of Criminal Procedure adopted by Law 1970 of March 25, 1999.

<sup>270</sup> Article 233 of the Code of Criminal Procedure.

8. The fact that the accused is a repeat offender;
9. The fact that the accused is a member of criminal conspiracies or organized crime groups;
10. The accused poses a real danger to society or to the victim or to the plaintiff; and
11. Any other duly accredited circumstance that would give the court cause to reasonably believe that the accused is a flight risk.

*Article 235. (Danger of Obstruction).*

By danger of obstruction is understood every circumstance that makes it possible to state with foundation that the accused, with his or her conduct, will thwart the inquiry into the truth. To decide whether it is present, one will conduct a full evaluation of the existing circumstances, mindful in particular of the following:

1. That the accused destroys, modifies, hides, suppresses, and/or falsifies evidence;
2. That the accused has a negative influence on the participants, witnesses, or expert witnesses for them to provide false information or conduct themselves in a reticent manner;
3. That the accused illegally or illegitimately influences judges of the Supreme Court, judges of the Plurinational Constitutional Court, regular judges of collegial courts, technical judges, citizen judges, prosecutors, and/or officers and employees of the system of administration of justice.
4. That the accused induces others to perform the actions described in sections 1, 2, and 3 of this Article.
5. Any other circumstance duly accredited that allows one to sustain.

218. The Commission notes, in relation to the pre-trial detention order issued October 17, 2000 by the Ninth Criminal Examining Judge in the *Street Lamps* case, that this order was issued when Ms. Andrade Salmón was deprived of liberty as a result of the *Gader* proceeding, thus it did not have a direct effect on her liberty, since she was not enjoying her liberty at that time. Nonetheless, the Commission observes, as per the facts proven, that this order was based solely on Article 233(1) of the Code of Criminal Procedure, and did not take into account the requirements established at Article 233(2), specifically, "...that from the sworn statement one could note the existence of sufficient indicia to lead one to presume her participation in the incident that was being investigated."

219. The Inter-American Court has established that to restrict the right to personal liberty using measures such as pre-trial detention there must be sufficient indicia to make it possible to reasonably assume that the person facing trial has participated in the unlawful conduct being investigated.<sup>271</sup> For the Inter-American Court, the suspicion must be based on specific facts, and articulated with words, i.e. not on mere conjecture or abstract intuitions. Hence one deduces that the State should not detain so as to later investigate; to the contrary, it is only authorized to deprive a person of liberty once it has sufficient knowledge to have indicia of participation in the unlawful conduct. Nonetheless, even when this rule is satisfied, the deprivation of liberty of the accused cannot be based on general-preventive or specific-preventive purposes attributable to the penalty; rather, it can only be based on a legitimate aim, to wit, ensuring that the accused not limit the development of the procedure or elude the action of justice.

220. The Commission, for its part, has indicated:

The assumption to decide the deprivation of liberty of a person within the framework of a proceeding entails serious proof elements that relate the defendant to the investigated fact. This is an necessary requirement at the time of imposing any precautionary measure, since that circumstance, the proof that relates the person to the fact,

<sup>271</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 101; *Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs*. Judgment of September 21, 2006. Series C No. 152, para. 90.

determines that the defendant is innocent and differentiates him from any other defendant who has not been imposed any coercion measure and who is also innocent.<sup>272</sup>

221. The Commission has noted in its case-law that once this relationship is established between the facts investigated and the accused, which is required to issue any coercive measure, one must establish the grounds for which one may order the deprivation of liberty during a criminal proceeding. The Convention provides, as the only legitimate grounds for pre-trial detention, the danger that the accused will attempt to elude the action of the justice authorities or will attempt to obstruct the judicial investigation. By imposing the injunctive measure, one seeks to effectively conduct the trial by neutralizing the procedural dangers could block the attainment of that purpose.<sup>273</sup>

222. In this respect, the Inter-American Court has established:

The State's obligation to not restrict the detainee's liberty beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade justice is inferred from Article 7(3) of the Convention.<sup>274</sup>

223. As regards the right to the presumption of innocence that all persons accused of a crime enjoy, the Court has also noted that this right

... establishes the obligation of the State not to restrict the liberty of a detained person beyond the limits strictly necessary to ensure that he will not impede the efficient development of an investigation and that he will not evade justice; pre-trial detention is, therefore, a precautionary rather than a punitive measure. This concept is laid down in a goodly number of instruments of international human rights law, including the International Covenant on Civil and Political Rights, which provides that pre-trial detention should not be the normal practice in relation to persons who are to stand trial (Art. 9(3)).<sup>275</sup>

224. The Commission observes that Article 7 of the Code of Criminal Procedure<sup>276</sup> establishes that pre-trial detention is an exceptional measure. In addition, Article 221 of the Code of Criminal Procedure indicates that the right to personal liberty, as well as all other rights and guarantees recognized for every person by the Constitution of the State, as well as by the international treaties in force in Bolivia, and the Code of Criminal Procedure itself, may only be restricted

... when it is indispensable to ensure the discovery of the truth, the development of the proceeding, and the application of the law.  
The provisions that authorize measures that restrict rights shall be applied and interpreted in keeping with Article 7 of this Code. Those measures will be authorized by reasoned judicial resolution, as regulated by this Code, and shall only last so long as the need for their application subsists.

<sup>272</sup> IACHR, Report No. 86/09, Case of 12,553 Jorge, José and Dante Peirano Basso v. Eastern Republic of Uruguay, August 6, 2009, para. 77.

<sup>273</sup> IACHR, Report No. 86/09, Case of 12,553 Jorge, José and Dante Peirano Basso v. Eastern Republic of Uruguay, August 6, 2009, paras. 80 and 81.

<sup>274</sup> See I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 69; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 198; I/A Court H.R., *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 111; I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 180; and I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 153.

<sup>275</sup> I/A Court H.R. Case of Suárez Rosero v. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 77.

<sup>276</sup> Article 7 of the Code of Criminal Procedure: "The application of precautionary measures established in this Code shall be exceptional. When there is doubt in the application of a precautionary measure or other provisions that restrict rights or capacities of the accused, one should adopt the one most favorable to him or her."

One may not restrict the liberty of the accused to guarantee compensation of civil damages, or the payment of legal costs or fines.

225. According to Article 236 of the Code of Criminal Procedure, in force at the time of the facts, the pre-trial detention order should have been issued by the judge and contain:

1. The personal data of the accused or, if not known, such data as is used to identify him or her;
2. A succinct statement of the fact or facts attributed to him or her;
3. The express foundation on the conditions that motivate the detention, citing the applicable legal provisions; and,
4. The place where it is to be carried out.

226. The Commission observes in the instant case that the pre-trial detention orders of August 3, October 17, and November 14, 2000, did not comply with requirements 2 and 3 of Article 236 of the Code of Criminal Procedure, on not containing: (i) a succinct statement of the fact or facts attributed to Ms. Andrade Salmón, or of the circumstances of time, manner, and place in which Ms. Andrade allegedly committed the unlawful act; or (ii) an analysis of the existence in the specific case of the danger of flight or obstruction, in light of Articles 234 and 235 of the Code of Criminal Procedure. To the contrary, both detention orders were based solely on the purported guilty of the accused, for which no foundation was given.

227. The standards of the inter-American system for the protection of human rights reflect that deprivation of liberty should be the exception and not the rule, and accordingly require that the authorities make an individualized analysis of the circumstances that could justify that exceptional measure, which was not done in the instant case. Therefore, the Commission concludes, based on the facts provide and the analysis, that in the *Gader* and *Street Lamps* proceedings, the State of Bolivia violated Articles 7(1), 7(2), and 7(3) of the American Convention in connection with Articles 8(2) and 1(1) of said instrument, to the detriment of Ms. Andrade, on ordering her pre-trial detention and keeping her deprived of liberty based on the detention orders of August 3, October 17, and November 14, 2000, without justifying the need to deprive Ms. Andrade of liberty based on the danger of flight or obstruction of justice in the specific case, and for failing to establish the indicia of her guilt.

## A.2 Articles 7(6) and 25 of the American Convention

228. The Commission notes that the habeas corpus action, established at Article 7(6) of the American Convention, constitutes the fundamental guarantee for safeguarding the right of every person not to be subject to illegal or arbitrary detention. This remedy, moreover, should offer the possibility of the judicial authority verifying that the person detained is receiving humane treatment, and it should be an expeditious, suitable, and effective judicial remedy that guarantees those rights which in supervening fashion may be violated by the very conditions of the deprivation of liberty.<sup>277</sup> The existence of such a remedy is based on Article 25(1) of the American Convention.

229. The IACHR spelled out the standards regarding the nature and scope of such a remedy in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas<sup>278</sup>:

Principle V. ... All persons deprived of liberty shall have the right, exercised by themselves or by others, to present a simple, prompt, and effective recourse before the competent, independent, and impartial authorities, against acts or omissions that violate or threaten to violate their human rights. In particular, persons deprived of liberty shall have the right to lodge complaints or claims about acts of torture, prison violence, corporal punishment, cruel,

<sup>277</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc 64, December 31, 2011, para. 244.

<sup>278</sup> Document approved by the Commission at its 131<sup>st</sup> regular period of sessions, held March 3 to 14, 2008.



inhuman, or degrading treatment or punishment, as well as concerning prison or internment conditions, the lack of appropriate medical or psychological care, and of adequate food.

230. The Commission observes that in general the legislation of the member states of the OAS establishes remedies of this sort, with certain differences in terms of what they are called. In some cases this function is performed by the *acción de amparo* or *acción de tutela*, and in others, by the writ of habeas corpus itself in one or another of its modalities. What is important, independent of the name given to the remedy, is that it be effective, that is, capable of producing the result for which it was designed, that it have a useful effect, and that it not be illusory.<sup>279</sup>

231. The Commission notes that at the time of the facts in the instant case, there were two types of remedies that allowed a review of the legality of a deprivation of liberty: (1) the appeal of the pre-trial detention order as established in Article 251 of the Code of Criminal Procedure<sup>280</sup>; and (2) the presentation of the habeas corpus remedy as provided for in Article 18 of the Constitution.<sup>281</sup>

232. The petitioners allege that during the time Ms. Andrade was deprived of liberty her defense filed three writs of habeas corpus before the Constitutional Court, which despite having been ruled on favorably did not translate into the immediate release of Ms. Andrade Salmón. The State, for its part, alleged that Article 7(6) of the Convention was not violated because the Constitutional Court ruled in her favor, and in a timely, effective, and impartial manner, in response to the writs of habeas corpus filed by Ms. Andrade. It noted that these judgments were not carried out immediately since the petitioners did not present the bail set by the Constitutional Court instead of detention. It indicated that as a result of the complaint presented by the

<sup>279</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc 64, December 31, 2011, para. 246.

<sup>280</sup> Article 251.- (Appeal).

The decision ordering, modifying or rejecting the precautionary measures may be appealed within the space of seventy-two hours, although the appeal shall not suspend the order.

Once the appeal is filed, the pertinent case files shall be sent up to the Superior Court within twenty-four hours. Without staging additional proceedings, the court shall hold a hearing within three days of receiving the case files.

No subsequent appeal shall be permitted.

<sup>281</sup> Article 18 of the Constitution. Habeas corpus.

Every person who believes that he or she is improperly or illegally pursued, detained, prosecuted, or imprisoned may recur, by himself or herself or by anyone on his or her behalf, with notarized power of attorney or without it, to the Superior Court of the District or before any District Judge at his or her choice, in an action to ensure that legal formalities are respected. In those places where there is no District Judge, the action may be filed before an Examining Judge.

The judicial authority shall indicate immediately the day and time of the public hearing, ordering that the moving party be taken there. With that order a personal summons or notice shall be served at the office of the authority against whom the action has been brought; that order shall be obeyed without any observation or excuse, both by it and by those in charge of the prisons or places of detention without them, once summoned, being able to disobey by arguing a higher-ranking order.

In no case may the hearing be suspended. Once informed of the facts, the judicial authority shall issue a judgment in the hearing itself, ordering his or her release, having the legal defects repaired, or placing the claimant at the disposal of the competent judge. The ruling should be carried out forthwith. The decision that is issued shall be forwarded on review, *sua sponte*, before the Supreme Court of Justice within 24 hours, without the execution of the judgment being suspended for that reason.

If the respondent after attending the hearing leaves it before hearing the judgment, he or she will be given valid notice at the Tribunal. If he or she does not appear, the hearing will be held in his or her absence, and the presentation of the moving party or his or her representative shall be heard, and a judgment shall be handed down.

Public officials or private parties that defy court decisions shall, in the circumstances that this article stipulates and by order of the authority that heard the habeas corpus petition, be brought before the Criminal Judge to be prosecuted for compromising constitutional guarantees.

A judicial authority who does not proceed in keeping with the provisions of this article shall be subject to the sanction of Article 127(12) of this Constitution.

Vice-Minister of Justice to the Attorney General of the Republic an investigation was initiated in the cases reported by the alleged victim against the judges who issued the detention orders against Ms. Andrade Salmón for the alleged wrongful deprivation of liberty, rulings contrary to the Constitution and the laws, dereliction of duties, and disobedience of rulings in habeas corpus and constitutional *amparo* proceedings.

**(a) Criminal proceeding *Gader* case**

233. In relation to the *Gader* case, the Commission notes based on the facts proven that once the pre-trial detention order was issued on August 3, 2000, Ms. Andrade Salmón's defense counsel filed a writ of habeas corpus against the Third Criminal Examining Judge of La Paz, which was declared out of order on August 5, 2000, by the First Chamber of the Superior Court for the District of La Paz; that ruling was appealed by Ms. Andrade. Finally, on August 31, 2000, the Constitutional Court, on ruling on the appeal, found that it was appropriate to apply, instead of detention, a bail in the amount of 100,000 bolivianos, in keeping with Article 240 of the Code of Criminal Procedure.<sup>282</sup>

234. The Commission also notes that according to the facts proven on August 8, 2000, Ms. Andrade Salmón filed a motion for reconsideration against the pre-trial detention order with a view to the imposition of alternative measures, which was rejected on August 18, 2000, which was appealed by Ms. Andrade on August 26, 2000.

235. It appears in the facts proven that on September 6, 2000, the Third Criminal Examining Judge held a public hearing for the imposition of substitute measures, to carry out the August 31, 2000 ruling of the Constitutional Court which, pursuant to Article 18 of the Constitution in force at the time was self-executing. During the hearing, the Third Criminal Examining Judge ruled, contrary to what was ordered by the Constitutional Court, on the following precautionary measures: (1) the regular appearance by Ms. Andrade at the court on Mondays at 9:00 a.m. to sign the corresponding book; and (2) the bail of US\$100,000.00 or its equivalent in national currency, which should be deposited with the court to make effective the benefit of liberty.

236. The Commission notes, as appears from the facts proven, that after Ms. Andrade appealed the aforementioned decision, on October 2, 2000, the First Chamber of the Superior Court of Justice set a bail of 80,000 bolivianos instead of US\$100,000. Subsequently, on October 4, 2000, Ms. Andrade requested that the monetary bail be replaced by a vehicle, which was accepted in a hearing of October 10, 2000, and on October 11, 2000, requested that an order be issued ("*faccione Orden instruída*") for the vehicle that she had offered as a guarantee and that had been accepted could be registered with the Departmental Bureau of

<sup>282</sup> Article 240.- (*Measures to Substitute for Pre-trial detention*).

When pre-trial detention is not in order and there is a danger of flight or obstruction of the procedure, the judge or court, by reasoned resolution, may order the application of one or more of the following substitute measures:

1. Household arrest, either in the accused's domicile or in another person's, with no surveillance or with the surveillance ordered by the court. If the accused cannot provide for his or her economic needs or those of his or her family or is indigent, the judge may authorize his or her absence during the workday;
2. Supervised release, where the accused must appear regularly before the judge, court or other designated authority;
3. Prohibiting the person concerned from leaving the country, the place in which he or she resides or the area prescribed by the judge or the court, without the court's or judge's authorization, and conveying said order to the competent authorities;
4. Designating certain places as off-limits for the accused;
5. Prohibiting the accused from speaking with certain persons, provided the accused's right of defense is not adversely affected; and
6. Release on one's personal recognizance or bail. The bail may be posted by the accused or by another person by depositing money, securities, collateral or a mortgage.

On ruling on the application of the measures listed above, the judge or court shall determine the conditions and rules that the accused must abide by, with the express warning that the commission of a new offense or failure to comply with the rules imposed shall lead to the revocation of the measure and its replacement by another more serious one, including pre-trial detention if well-founded; the victim may address the court.

Transit of the District of Santa Cruz, and that the corresponding release order be issued once the aforementioned bureaucratic steps had been taken.

237. The Commission also observes that in late October 2000 the *Gader* proceeding was annulled until the case was randomly assigned, that is, prior to the issuing of the initial order to investigate and the order of pre-trial detention, based on a judgment of the Constitutional Court in the resolution of a motion filed by another co-accused in that proceeding. As a result, the *Gader* proceeding, after the process of random assignment, went to the Seventh Criminal Examining Court, which refused to stop the pre-trial detention of Ms. Andrade, even though at that time there was no initial order of investigation in force; accordingly Ms. Andrade Salmón remained deprived of liberty. Once the initial order of investigation was issued on November 7, 2000, the Seventh Criminal Examining Judge took the sworn statement from Ms. Andrade on November 14, 2000, issuing an order of pre-trial detention against her on that same date, contrary to what was resolved by the Constitutional Court on August 31, 2000, and by the First Chamber of the Superior Court of Justice on October 2, 2000.

238. According to the facts proven Ms. Andrade appealed the pre-trial detention order on November 15, 2000, which was overturned on December 1, 2000, by the Second Chamber of the Superior Court of Justice, setting bail at 300,000 bolivianos, even though the Constitutional Court had imposed a bail of 100,000 bolivianos on August 31, 2000, and the First Chamber of the Superior Court of Justice a bail of 80,000 bolivianos on October 2, 2000, which had been replaced by a vehicle. As a result, Ms. Andrade filed a writ of habeas corpus in relation to the bail imposed that was determined to be unfounded on December 7, 2000, thus this judgment was appealed. Finally, on January 16, 2001, the Constitutional Court overturned the foregoing judgment and ordered the court from which the appeal was taken to apply the substitute measures it deemed pertinent, ensuring that the bail not be one that it would be impossible for her to make.

239. The Commission notes that finally on February 6, 2001, the substitute measures were ordered by the judge in charge of the case, who among other measures set a bail of 40,000 bolivianos, thus Ms. Andrade Salmón, after complying with the previous measures, regained her liberty on February 10, 2001, after having been deprived of liberty for six months from the time the initial order of investigation that was subsequently voided was issued, and almost five-and-a-half months after the Constitutional Court decided to impose substitute measures in her favor. In addition, the Commission observes that even though Article 18 of the Constitution established that “the judgment should be executed immediately,” from the issuance of the judgment of January 16, 2001, until the holding of the hearing on alternative measures, 21 days elapsed.

240. The Commission notes that for a remedy to be effective, it must be genuinely suitable to establish whether a violation of human rights has occurred and provide as necessary to remedy it.<sup>283</sup> Specifically, the Inter-American Court has established that Article 7(6) of the Convention is not guaranteed merely by the formal existence of the remedy, but that in addition it must be effective, i.e. it must yield results or responses to the violations of rights set forth in the Convention.<sup>284</sup>

To the contrary, the judicial activity would not signify a real control, but merely a formal or even symbolic procedure that would result in an impairment of the liberty of the individual. Furthermore, an analysis of the lawfulness of a deprivation of liberty “must examine the

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<sup>283</sup> I/A Court H.R. *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 of the American Convention). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.

<sup>284</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñíiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 133; *Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs*. Judgment of February 2, 2001. Series C No. 72, para. 77; *Case of the “Five Pensioners” v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 126.

reasons invoked by the complainant and specifically express an opinion on them, in accordance with the parameters established in the Inter-American Convention.”<sup>285</sup>

241. In addition, the American Convention (Article 25(2)(c)), like the International Covenant on Civil and Political Rights (Article 2(3)(c)), expressly establish the duty of the competent authorities to comply with every decision it which it has considered a motion aimed at protecting human rights to be well-founded.<sup>286</sup> Therefore, it does not suffice for there to be a judgment that recognizes the existence of certain rights and in which it is ordered that specific measures or structural reforms be adopted, but rather it is necessary that these decisions be carried out and produce the effects established by law.<sup>287</sup>

242. The Commission observes that deprivation of liberty is an exceptional measure in a criminal proceeding. Accordingly, the delay of almost five months in carry out a habeas corpus ruling that is favorable and self-executing not only violates the right to the review and enforcement of judicial rulings, but implies that the detention itself ceases to have a legal foundation and so becomes arbitrary. Ms. Andrade, even having secured a decision from the Constitutional Court on August 31, 2000, that ordered her release on bail, was released in early February 2001, after a complex process that was not expeditious.

243. The Commission observes that the series of appeals that was necessary for the release of Ms. Andrade Salmón reflects that she did not have a simple and effective remedy to protect her right to personal liberty.

244. Therefore, the Commission concludes, based on its consideration of the evidence produced by the parties in the record of the *Gader* case, that Ms. Andrade Salmón’s right to a simple and effective remedy to protect her fundamental rights in the terms of Articles 7(6) and 25 of the American Convention was violated, and therefore, her right to personal liberty enshrined in Article 7(1) of the same instrument, in relation to the duty to respect and ensure enshrined in Article 1(1), since the judgments of the Constitutional Court on habeas corpus of August 31, 2000, and January 16, 2001, were not effective.

#### **b) *Street Lamps***

245. In relation to the criminal proceeding in the *Street Lamps* case, which was conducted independent of the *Gader* proceeding, it appears in the facts proven that on October 17, 2000, the Ninth Criminal Examining Judge issued a pre-trial detention order against Ms. Andrade, which she appealed on October 18, 2000, and it was granted and remanded for procedural defects in the processing of the appeal. The Commission also notes, according to the facts proven, that Ms Andrade filed a writ of habeas corpus on October 25, 2000, which was rejected on October 27, 2000. Ms. Andrade, who was deprived of liberty as of August 3, 2000, in at the women’s facility known as Centro de Orientación Femenina as a result of the *Gader* proceeding, was transferred on October 27, 2000, to the prison known as the Penitenciaría Distrital at Obrajes.

246. Subsequently, on October 31, 2000, Ms. Andrade appealed to the Constitutional Court the ruling that dismissed her writ of habeas corpus, based on the alleged improper and unlawful persecution she was suffering; the impact on the merits of the procedural defects in the processing of the writ by the staff of the court, since eight days after having filed the writ the record had not been forwarded to the Superior Court, as the signatures were being cured (the law established a term of 24 hours for doing so); and the absence of any danger of flight or information that would indicate that Ms. Andrade Salmón could obstruct the effort to

<sup>285</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 103; *Case of López Álvarez v. Honduras. Merits, Reparations and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 96.

<sup>286</sup> I/A Court H.R. *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, paras. 245-251; and IACHR, Report No. 35/96, Case 10,832, Merits, Luis Lizardo Cabrera, Dominican Republic, April 7, 1998, paras. 107 and 108.

<sup>287</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc 64, December 31, 2011, para. 249.

find the truth. It appears in the facts proven that before the resolution of this writ, on November 10, 2000, the Superior District Court resolved the appeal of the pre-trial detention order that had been filed on October 18, 2000, ordering the cessation of the pre-trial detention and the adoption of a series of precautionary measures, among them the imposition of a bail of 100,000 bolivianos, which were deposited by Ms. Andrade on November 27, 2000.

247. The Commission notes that according to the facts proven on December 11, 2000, the Constitutional Court ruled favorably on the writ of habeas corpus filed on October 31, 2000, on considering that the judge whose decision was appealed had committed an illegal act on ordering the pre-trial detention of Ms. Andrade without the requirements of Article 233 of the Code of Criminal Procedure being present simultaneously (existence of indications of the guilt of the accused and danger of flight or obstruction of justice). It also appears in the facts proven that once the order for Ms. Andrade not to leave the court's jurisdiction was established on January 10, 2001 (the last precautionary measure pending enforcement), the Ninth Criminal Examining Judge issued the order to release Ms. Andrade Salmón on January 22, 2001, though she continued to be detained until February 10, 2001, based on the *Gader* proceeding.

248. Accordingly, the Commission concludes that based on the facts proven and the parties' arguments, as well as the judgments of the Superior District Court of November 10, 2000, and of the Constitutional Court of December 11, 2000, that in the instant case Ms. Andrade Salmón's right to a simple and effective remedy to protect her fundamental rights in the terms of Article 7(6) of the American Convention was not violated, as Ms. Andrade had access to the remedy, and it was not proven that it was not effective.

249. The Commission further notes, based on the facts proven, that based on the complaint filed by the Vice Minister of Justice, on August 20, 2003, an investigation was initiated against the former Third Criminal Examining Judge and the Ninth Criminal Examining Judge for allegedly committing the crimes of deprivation of liberty, issuing resolutions contrary to the Constitution and the laws, failure to carry out duties, and disobedience of the rulings in habeas corpus and constitutional *amparo* proceedings, and that June 5, 2005 was set for the beginning of the trial, without the parties having provided information as to the status of those proceedings to date.

250. Finally, the Commission observes, based on the facts proven, that on January 29, 2004, the First Civil Chamber of the Superior District Court of La Paz issued a judgment on the characterization of damages in the writ of habeas corpus filed by Ms. Andrade Salmón against the Ninth Criminal Examining Judge (the *Street Lamps* case), ordering the judge in question to pay the sum of 2,079.50 bolivianos. Given that this has been a firm judgment since February 18, 2004, the Commission will take into account this monetary amount when making its recommendations.

### **A.3 Article 7(5) of the American Convention in relation to Articles 21<sup>288</sup> and 22<sup>289</sup> of the same instrument**

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<sup>288</sup> Article 21(1) of the American Convention: "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society."

<sup>289</sup> Paragraphs 1-3 of Article 22 of the American Convention:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right to leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

251. Article 7(5) of the American Convention recognizes the right to be tried within a reasonable term, which has a different scope depending on whether the person is deprived of liberty, and establishes that his or her liberty may be conditioned on guarantees that ensure his or her appearance at trial.

252. With respect to the relationship between Articles 7(5) and 8(1) of the Convention as regards the right to be tried in a reasonable time, the Inter-American Court has established: “Even when they refer to different issues, both rules have the same purpose: to limit, as much as possible, the abridgement of rights of an individual.”<sup>290</sup>

253. As regards the alternatives to deprivation of liberty, Principle 4 of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the IACHR by Resolution 01/08 during its 131<sup>st</sup> regular period of sessions, establishes:

The Member States of the Organization of American States shall establish by law a series of alternative or substitute measures for deprivation of liberty, duly taking into account the international human rights standards on the topic.

When applying alternative or substitute measures for deprivation of liberty, Member States shall promote the participation of society and the family in such a way as to complement the intervention by the State, and shall also provide the necessary and appropriate resources to ensure their availability and effectiveness.

254. According to Rule 3 of the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), which have among other aims that the states introduce “non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender,” the following legal safeguards should be established:

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, background of the offender, the purposes of sentencing and the rights of victims.

255. The Commission notes that pursuant to the legislation in force at the time of the facts in Bolivia (Article 240 of the Code of Criminal Procedure), in those cases in which pre-trial detention is unfounded, but there is a danger of flight or obstruction of the procedure, the judge or court could order, by a reasoned resolution, that one of more of the following substitute measures be applied:

1. Household arrest, either in the accused’s domicile or in another person’s, with no surveillance or with the surveillance ordered by the court;
2. Supervised release, where the accused must appear regularly before the judge, court or other designated authority;
3. Prohibiting the person concerned from leaving the country, the place in which he or she resides or the area prescribed by the judge or the court, without the court’s or judge’s authorization, and conveying said order to the competent authorities;
4. Designating certain places as off-limits for the accused;
5. Prohibiting the accused from speaking with certain persons, provided the accused’s right of defense is not adversely affected; and
6. Release on one’s personal recognizance or bail. The bail may be posted by the accused or by another person by depositing money, securities, collateral or a mortgage.

<sup>290</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 119.

256. As regards the purpose and determination of the bail, the Commission observes that Article 241 of the Code of Criminal Procedure notes:

The bail will have the exclusive aim of ensuring that the accused will carry out all the obligations that are imposed on him or her and the orders of the judge or court.

Bail will be set bearing in mind the economic situation of the accused; in no case will a bail be set that is impossible to post.

The accused and the guarantor will be able to substitute an equivalent for the bail, after it is authorized by the judge or court.

257. The Commission notes as regards the duration of the bail that according to Article 249 of the Code of Criminal Procedure:

The bail shall be paid and the goods put up as collateral shall be returned, plus interest generated in the bank account, so long as it has not first been executed, when: 1. the decision to require bail is revoked; 2. the accused is acquitted or the case against the accused is dismissed or the proceedings are archived, by firm resolution; and, 3. The accused subjects to enforcement of the penalty, or it should not be enforced.

258. Additionally, Article 250 of the Code of Criminal Procedure establishes that personal precautionary measures are revocable or modifiable, even *sua sponte*.

259. In the instant case, the petitioners allege that Ms. Andrade Salmón, as a result of being put on trial, has not been able to open a bank account, write a check, or obtain a loan, and has been subjected to restrictions and damages for more than 10 years. They indicate that the State, on freezing her bank accounts and forcing to pay unreasonable bails and creating conditions that turned her into a person not employable for life, on the basis of criminal proceedings that have violated due process, has violated Article 21 of the American Convention.

260. The State, for its part, indicated that the petitioners have presented vague allegations that do not state facts supporting their arguments, nor do they explain what amounts or bank accounts were frozen, as well as the times during which she was impeded from access to create a bank account in her own name. It argued that precautionary measures, personal or real, are provisional decisions that are not final, thus they can be reviewed, modified, or revoked at the request of the parties, as established in Article 250 of the Code of Criminal Procedure and, as the alleged victim recognized on filing the respective appeals with a view to proceeding to the substitution and/or modification of the bail imposed in the specific case. The State indicated that the Constitutional Court of Bolivia has indicated in its constitutional precedents that: "while Article 241 of Law No. 1970 provides that the sole purpose of bail is to ensure that a defendant will meet the obligations imposed, and must be assessed by reference to the defendant's assets, it is also true that a defendant must present information and evidence to enable the judge or court to get a clear and real picture of his or her assets at the time bail is set, based on those assets. The court cannot be expected to assume, as a general rule, that a defendant is a person of either modest or fair economic means or circumstances."<sup>291</sup>

261. The State alleged that it has not violated Article 21 of the Convention to the detriment of Ms. Andrade since she has always been able to be the principal owner of property, both real and movable, subject to registration and in keeping with the limitations established in Bolivian law. The State argued that the provisional measure of putting up an economic and real bail, imposed on Ms. Andrade in processing the criminal proceedings brought against her, cannot be considered unreasonable and incompatible with the spirit of Article 21 of the American Convention, since the economic or real bail provided for in the Code of Criminal Procedure is not a penalty that depends on the greater or lesser degree of criminal liability of the accused, but rather its nature and amount are determined in light of the elements established in Articles 240, 241, and 244 of the Code of Criminal Procedure, which are related to the purposes of the proceeding. In this

<sup>291</sup> The State refers to the constitutional precedent found in Constitutional Judgment No. 162/2002-R of February 27, 2002.

regard, the State indicated that one of the factors duly shown in the domestic courts refers to “the procedural risks,” i.e. the danger of flight and obstruction of the investigation and prosecution of the criminal proceeding, thus the precautionary measures of bail and being required not to leave the court’s jurisdiction are enshrined in the Bolivian legislation along the lines indicated by the case law of the European Court of Human Rights.<sup>292</sup>

262. The Commission notes, in keeping with the facts proven, that in the six proceedings initiated against Ms. Andrade, precautionary measures of bail and being compelled not to leave the court’s jurisdiction were imposed on her at some point and, in addition or in their place, required the presentation of guarantors:

- In the *Gader* case, on February 6, 2001, the Seventh Criminal Examining Court imposed the following precautionary measures on Ms. Andrade Salmón (which were carried out on February 9, 2001): (1) the obligation to appear once a week at the Court; (2) the prohibition on leaving the court’s jurisdiction; and (3) an economic bail of 40,000 bolivianos (some US\$ 5,700 in current dollars). The Commission has not been informed by the parties when the foregoing precautionary measures were lifted. Nonetheless, the Commission understands that these measures were in place until December 15, 2011, the date on which charges against Ms. Andrade were dismissed with prejudice, i.e. for 10 years and 10 months.

- In the *Street Lamps* case, the Second Criminal Chamber of the District Superior Court ordered the following precautionary measures on November 10, 2000 (which were carried out by Ms. Andrade on January 10, 2001): (1) appearance of the accused at the Court of origin on Saturdays at 9:00 a.m. to sign the record of attendance; (2) the prohibition on leaving the department and the country, where the court had to give official notice to the Bureau of Migration for the corresponding prohibition on leaving the court’s jurisdiction; (3) the presentation of two personal guarantors of the bail; and (4) the imposition of an economic measure that was set at Bs. 100,000. The Commission notes according to the facts proven that Ms. Andrade requested that the foregoing measures be modified in 2003. To date, the Commission has not been informed by the parties whether the foregoing measures were modified during the proceeding. Given that this case was reopened in 2011, the Commission considers that the foregoing measures have been in force to date, for more than 11 years.

- In relation to the *Guaglio* case, the Commission has not been informed what precautionary measures to substitute for pre-trial detention were imposed on Ms. Andrade, or whether these were lifted at any time, thus it will not make any ruling in this respect.

- In the *Mendieta* case, in March 2000 bail was set at 300,000 bolivianos, and it was decreed that Ms. Andrade was prohibited from leaving the court’s jurisdiction. Given that the amount of the bail was appealed by Ms. Andrade, the First Criminal Chamber of the District Superior Court set a bail of 150,000 bolivianos, which was substituted at Ms. Andrade’s request for a lot and a vehicle. On February 10, 2003, Ms. Andrade sought modification of the days when she had to go to the court, which was granted in a public hearing on March 20, 2003. Subsequently, on September 14 and November 23, 2004, Ms. Andrade asked that the precautionary measures be lifted; this request was rejected on September 30, 2005. Subsequently, on August 15, 2007, the Criminal Examining Judge decided *ex officio* to lift the prohibition on leaving the court’s jurisdiction imposed on Ms. Andrade Salmón; that decision was appealed by the plaintiffs on August 23, 2007. Finally, on August 23, 2007, charges against Ms. Andrade were dismissed. The Commission has not been informed of the result of the appeal filed by the municipal government, when the dismissal of charges against Ms. Andrade became firm, or when the precautionary measures were lifted.

- In the *Mallasa* case, on November 7, 2002, the Fourth Judge of Criminal Investigation ordered, as measures to substitute pre-trial detention: (1) the appearance of Ms. Andrade before the court on Saturdays at 9:30 a.m.; (2) the prohibition on her leaving the court’s jurisdiction; and (3) the presentation of a joint and several guarantor who would guarantee her presence throughout the proceeding. These measures were lifted on

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<sup>292</sup> The State cites the judgments of the European Court of Human Rights in the Case of Neumeister v. Austria of June 27, 1968, para. 14 and in the Case of Iwañczuck v. Poland, para. 66.



November 14, 2007, at the request of Ms. Andrade, with the exception of the prohibition on leaving the court's jurisdiction, which as of November 4, 2008 was still in force. The Commission has not had access to the resolutions of November 7, 2002 and November 14, 2007, and has not been informed on what date charges against Ms. Andrade were preliminarily dismissed, when it became firm, and when the order prohibiting her from leaving the court's jurisdiction was lifted even though the parties have agreed that the dismissal of charges is firm.

- In the *Esin* case, as appears in the part relating to the facts proven, the Commission was only informed that the defendants were free but under precautionary measures, thus the IACHR is unaware of when they were issued, what they entailed, and when the precautionary measures issued were lifted, accordingly it will not making any decision in that regard.

263. The Commission considers, taking into account the principle of the presumption of innocence, and following the case-law of the European Court of Human Rights, that the guarantee established at Article 7(5) of the American Convention has as its purpose ensuring that the accused appear at the proceeding, and not reparation for harm caused. Accordingly, the amount established in the bail must be set primarily taking into account the assets of the person accused, as well as his or her relationship with the persons who guarantee that the accused will appear before the courts such that it sufficiently deter the person from taking flight. In addition, and in some circumstances, it would be considered reasonable to take into account the harm caused the accused.<sup>293</sup> The decision that sets the amount of the bail has to duly justify why that amount is established in the specific case, and has to take into account the economic means of the accused.<sup>294</sup> Based on the information provided by the parties, the IACHR will refer only to the alleged violations in the *Gader* and *Street Lamps* cases in this section.

264. The Commission notes in relation to the resolutions issued by the judges or courts on precautionary measures to which it had access, that the resolution of February 6, 2001 in the *Gader* case and the one issued November 10, 2000 in the *Street Lamps* case did not justify the sums or bonds set and did not take into account the economic means of the accused, even though according to Article 240 of the Code of Criminal Procedure the alternative measures should have been adopted by a reasoned resolution. Nor did the judicial authorities ask Ms. Andrade to present clear and real information about her economic situation before issuing said measures.

265. The Inter-American Court has noted in its case-law that the decision adopted by the domestic organs that may affect human rights should be duly reasoned, for otherwise they would be arbitrary decisions.<sup>295</sup> In this sense, the argument of a judgment should show that due consideration has been given to the arguments of the parties and that all the evidence has been analyzed. In addition, the reasoning shows the parties that they have been heard, and, in those cases in which the decisions are appealable, that they are afforded the opportunity to criticize the resolution and have a new review of the issue before the higher-level bodies. In view of all the foregoing, the duty to state the reasoning of a decision is one of the "due guarantees" included in Article 8(1) to safeguard the right to due process.<sup>296</sup>

266. Accordingly, the Commission concludes that in the instant case there was a violation of the right enshrined in Article 7(5) of the American Convention in relation to Articles 21 and 1(1) of the same instrument in the *Gader* and *Street Lamps* proceedings, to the detriment of Ms. Andrade.

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<sup>293</sup> ECHR, Case of Mangouras v. Spain (Application no. 12050/04), Grand Chamber, Judgment of 28 September 2010, paras. 78 and 81; Case of Toshev v. Bulgaria, (Application no. 56308/00), Judgment of 10 August 2006, para. 87; European Commission on Human Rights, Case of Moussa v. France (Application no. 28897/95), Commission decision of 21 May 1997, Decisions and Reports 89-B, p. 92).

<sup>294</sup> ECHR, Case of Mangouras v. Spain (Application no. 12050/04), Grand Chamber, Judgment of 28 September 2010, para. 78 and 81.

<sup>295</sup> I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 78.

<sup>296</sup> I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 78.

### Article 7(5) of the American Convention in relation to Article 22 of the same instrument

267. In relation to Article 22 of the American Convention, the Inter-American Court has noted that the right to movement and residence, including the right to leave the country, may be subject to restrictions, in keeping with Articles 22(3) and 30 of the Convention. Nonetheless, such restrictions must be expressly established by law, to prevent crime or to protect national security, public safety, public order, public morals, or public health, or the rights or freedoms of others to the extent essential in a democracy society.<sup>297</sup> The Commission, following the case-law of the Inter-American Court, will analyze, in the instant case, whether the State, on establishing restrictions on Ms. Andrade's right to circulation, complied with the requirements of legality, necessity, and proportionality to the extent essential in a democracy society, which are inferred from Article 22(3) of the American Convention<sup>298</sup>, in relation to the criminal proceedings related to the *Gader* and *Street Lamps* cases, since the parties did not produce sufficient elements to determine whether there was a violation of this right in the other criminal proceedings to which Ms. Andrade was subjected.

268. As regards the requirement of legality, the Inter-American Court has noted:

the importance of the exercise of the principle of legality in establishing a restriction of the right to leave the country in a democratic society, given the significant impact that this restriction has on the exercise of personal freedom. Consequently, the State should define precisely and clearly by law, the exceptional circumstances under which a measure such as the restriction to leave the country is admissible. The lack of legal regulation prevents such restrictions from being applied, because neither their purpose nor the specific circumstances under which it is necessary to apply the restriction to comply with some of the objectives indicated in Article 22(3) of the Convention have been defined. It also prevents the defendant from submitting any arguments he deems pertinent concerning the imposition of this measure. Yet, when the restriction is established by law, its regulation should lack any ambiguity so that it does not create doubts in those charged with applying the restriction, or the opportunity for them to act arbitrarily and discretionally, interpreting the restriction broadly. This is particularly undesirable in the case of measures that severely affect fundamental attributes, such as freedom.<sup>299</sup>

269. With respect to the requirement of necessity, the Commission observes that precautionary measures that affect personal liberty and the right of movement of the accused should be exceptional, since they are limited by the right to the presumption of innocence and the principles of necessity and proportionality, which are indispensable in a democratic society.<sup>300</sup> This measure cannot be a substitute for the penalty of deprivation of liberty nor serve its purposes, which may happen if it continues to be applied when it has ceased to perform the above-noted functions. Otherwise, the application of a precautionary measure that affects the personal liberty and right to movement of the accused would be the same as anticipating a penalty attaching to the verdict, which is at odds with universally recognized general principles of law.<sup>301</sup>

270. As regards the requirement of proportionality, the Court has established that the restriction of the right to leave the country that is imposed in a criminal proceeding by a precautionary measure should

<sup>297</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 117.

<sup>298</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 123.

<sup>299</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 125; *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C No. 72, paras. 108 and 115; *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, para. 157; and *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, para. 121.

<sup>300</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 129.

<sup>301</sup> I/A Court H.R., *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C No. 35, para. 77.

be proportional to the legitimate aim pursued, such that it is applied only if there is no other less restrictive means and for the time strictly necessary to serve its purpose<sup>302</sup>, in this case that of preventing Ms. Andrade from taking flight. Along the same lines, the Human Rights Committee stated in its General Comment No. 27:

... Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.

... The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.<sup>303</sup>

271. In the instant case, the petitioners alleged that the State violated Articles 22(1), 22(2), and 22(3) of the American Convention to the detriment of Ms. Andrade Salmón on not having returned her passport to her, ordering her not to leave the court's jurisdiction, and prohibiting her from travelling outside of La Paz, even though she had not been convicted of any offense. They further alleged that the violations of Article 22 of the convention stem from the violations of due process. They stated that for more than nine years, and in direct violation of the Bolivian laws regarding the imposition of precautionary measures in criminal cases, Ms. Andrade has not been able to move freely in Bolivia or leave the country at her discretion.

272. The State argued that the precautionary measure of being compelled not to leave the court's jurisdiction could have been suspended temporarily if Ms. Andrade Salmón had so requested, and indicated for illustrative purposes that in the criminal proceeding known as *Street Lamps*, Ms. Andrade asked to leave the locality of Chumani for health reasons, which was granted in 2001 and, subsequently in that same year, when Ms. Andrade requested the provisional lifting of the order to stay within the court's jurisdiction for work-related reasons, the judge granted that request. It also argued that the application of the measure requiring her not to leave the court's jurisdiction was done in keeping with the perspective of proportionality, legitimacy, exceptionality, and temporality, as established in Article 240 of the Code of Criminal Procedure. It indicated that it was not a final resolution, and that once applied the judge can authorize the accused, on an exceptional basis, to leave the country.

273. The Commission notes that Article 240 of the Code of Criminal Procedure provides for being required to remain within the court's jurisdiction as a substitute measure for pre-trial detention and establishes that substitute measures shall be issued "when there is not a basis for pre-trial detention and there is a danger of flight or obstruction of the procedure," for which the judge or court will issue a reasoned resolution.

274. The Commission notes that in the resolution adopted by the Seventh Criminal Examining Judge on February 6, 2001, in the *Gader* case, he imposed the measure requiring that Ms. Andrade not leave the court's jurisdiction, as well as other precautionary measures, without establishing a basis as to why that measure was in order in the specific case. The Commission also notes that in the proceeding known as *Street Lamps*, the Second Criminal Chamber of the Superior District Court, in its resolution of November 10, 2000, did not establish the need to order a prohibition on her leaving the department based on the existence of circumstances that would lead one to presume a danger of flight. The Commission has referred previously in this report to the importance of the decisions that are adopted by domestic bodies that may affect human rights being duly reasoned, for otherwise they would be arbitrary decisions.<sup>304</sup> Accordingly, the Commission

<sup>302</sup> I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 133.

<sup>303</sup> United Nations, Human Rights Committee, General Comment No. 27 of November 2, 1999, paras. 14 and 15.

<sup>304</sup> I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para.78.

concludes that a restriction was applied to Ms. Andrade's right of movement and residence in the criminal proceedings against her in the cases known as *Gader* and *Street Lamps* did not comply with the requirements established in Article 240 of the Code of Criminal Procedure.

275. The Commission notes, based on the lack of foundation of the resolutions of the authorities who issued the measures requiring that the alleged victim remain within the court's jurisdiction, as well as the lack of arguments by the State with respect to the need to adopt and maintain this measure in the specific case for more than 10 years that in the *Gader* and *Street Lamps* cases the State did not comply with the principle of necessity.

276. As regards the requirement of proportionality, the Commission notes with respect to the gravity of the crime and the severity of the penalty that in the *Gader* case Ms. Andrade faced a penalty of up to eight years in prison, on having been accused of fraud, criminal association, and anti-economic conduct. In the *Street Lamps* case, Ms. Andrade, on having been accused of being an accomplice in the dereliction of duties, resolution against the Constitution and the laws, and improper use of influence, and mindful that the proceeding was reopened in 2010, could face up to approximately three years in prison. The Commission notes that the only proceeding in which Ms. Andrade has been convicted, and the conviction is firm (*Guaglio* or *Fraud on the Office of the Director General for Pensions*), Ms. Andrade was sentenced to three years in prison, which is currently suspended.

277. The Commission notes that as has been established in the facts proven, Ms. Andrade Salmón has been prevented from leaving the country and La Paz for more than 10 years. The Commission considers that the duration of this restriction does not meet the requirement of proportionality with the aim pursued, which is to keep the person facing trial from fleeing, and that in the event that she is convicted, from serving the sentence imposed, since the measure prohibiting her from leaving the court's jurisdiction has been in place for a time longer than the penalty that she could face if convicted.

278. The Commission clearly considers that the State did not meet the requirements of legality, necessity, and proportionality in a democratic society when issuing and maintaining the measure prohibiting Ms. Andrade from leaving the court's jurisdiction.

279. Accordingly, the Commission concludes that in the instant case, in relation to the criminal proceedings captioned *Gader* and *Street Lamps*, the State has violated Article 7(5) of the American Convention in relation to Articles 1(1), 21, and 22(2) and 22(3) of the American Convention to the detriment of Ms. Andrade Salmón.

**B. Right to be tried in a reasonable time (Article 8 of the American Convention) in relation to Article 1(1) of the same instrument**

280. Article 8(1) of the American Convention establishes, in the pertinent part, the following minimum guarantees:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

281. The Commission has indicated previously that Article 8 of the Convention "includes different rights and guarantees flowing from a common juridical asset or good and which considered as a whole constitute a single right not specifically defined but whose unequivocal purpose is definitely to ensure the right of everyone to a fair trial."<sup>305</sup>

<sup>305</sup> IACHR. Report No. 5/96, Case 10,970, Raquel Martín de Mejía, Peru, March 1, 1996.

282. The Commission recalls that it is a basic principle of the law on the international responsibility of the State, reflected international human rights law, that every state is internationally responsible for acts or omissions of any of its branches or organs that violate rights enshrined in international instruments, as per Article 1(1) of the American Convention.<sup>306</sup>

283. As regards the possibility of the organs of the system analyzing domestic proceedings, the Inter-American Court has established as follows:

[I]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, [the Commission and the Court] may have to examine the respective domestic proceedings. In light of the above, the domestic proceedings must be considered as a whole, and the role of the international court is to establish whether the proceedings as a whole were in accordance with international provisions.<sup>307</sup>

284. The Inter-American Court has considered that in general a judicial proceeding itself does not constitute an unlawful impact on the honor or dignity of the person.<sup>308</sup> In this respect, the Commission agrees with the Inter-American Court that given their nature, judicial, administrative, or other proceedings may prove bothersome or inconvenient for those subject to the procedure, which is why they should be accepted as a burden that is part and parcel of belonging to society and living in a state under the rule of law. Nonetheless, the Commission observes that Article 8(1) of the Convention establishes, as one of the elements of due process, that the courts decide the cases submitted for their cognizance in a reasonable time by a competent judge. In this sense, a prolonged delay may itself end up constituting a violation of judicial guarantees.<sup>309</sup> The reasonableness of the time should be weighed in relation to the total duration of the criminal proceeding.<sup>310</sup>

285. In the instant case, the petitioners allege that in the context of the six criminal proceedings in which Ms. Andrade Salmón was a defendant (*Gader, Guaglio, Mendieta, Street Lamps, Mallasa and Esin*), even though there were official reports that cleared Ms. Andrade of any liability whatsoever, there were several violations of due process, in particular of the guarantee of being tried in a reasonable time, of the presumption of innocence, of the right to defense, and the right to be tried by an independent and impartial court.

286. The petitioners argue that on maintaining the aforementioned proceedings in the investigative stage for many years, when under Bolivian law they should not last more than 20 days; and if prolonged should not last, in all, more than 120 days, when this was the maximum time allowed for the

<sup>306</sup> I/A Court H.R., Case of Ximenes Lopes v. Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 172, Case of Baldeón García v. Peru. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 140; I/A Court H.R., Case of Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, paras. 111 and 112; and I/A Court H.R., Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 108.

<sup>307</sup> I/A Court H.R., Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 142, I/A Court H.R., Case of Lori Berenson Mejía v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, para. 133; I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 200; and I/A Court H.R., Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 120.

<sup>308</sup> I/A Court H.R., Case of Valle Jaramillo v. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 174.

<sup>309</sup> I/A Court H.R., Case of García Asto and Ramírez Rojas v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 166; I/A Court H.R., Case of Gómez Palomino v. Peru. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 160.

<sup>310</sup> I/A Court H.R., Case of López Álvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141, para. 129; I/A Court H.R., Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 104; and 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, para. 168.

duration of the entire proceeding pursuant to Articles 166 to 180 of the Code of Criminal Procedure; and on denying the petitions for extinction of the criminal action filed by Ms. Andrade, the State has violated the rights of Ms. Andrade to due process, guaranteed in Article 8(1) of the American Convention. The petitioners argue that the six proceedings brought against Ms. Andrade are so complex as to justify the time elapsed since they were initiated.

287. The State, for its part, indicated that Ms. Andrade is facing six criminal proceedings related to her activity as council member and mayor of the municipality of La Paz during the period from 1996 to 2000. It indicated that each proceeding has its origins in different facts related to purported handling of the economic resources of the Bolivian people, and indicated that in the instant case there were no violations of the human rights of Ms. Andrade, since she was tried in keeping with the relevant constitutional and statutory provisions. The State alleged that due to the large number of persons tried along with Ms. Andrade in these six proceedings, there were delays since the existence of a plurality of persons accused implied presenting any number of objections and motions provided for in the domestic legal system, which interrupted the principal litigation. It indicated that the motions presented by the accused were generally procedural in nature, which required the parties to appear for a special hearing before the judicial organ, which based on its powers had to rule expressly on each one so as to be able to go forward and resolve the underlying controversy, which translated into a judicial delay that was provoked. In this sense, the State indicated that in five of the six proceedings (*Gader*, *Guaglio*, *Street Lamps*, *Mendieta*, and *Mallasa*), the various judges who heard the request to extinguish the criminal action filed by Ms. Andrade and other of the co-accused ruled that it was clear that the delay was due to the conduct of the defendants and/or their attorneys, as well as the complexity of the case and the plurality of persons on trial. As regards the *Esin* case, the State indicated that it was ordered that the criminal complaint be dismissed, and the record was archived at the beginning of the process, thus there was no violation of the right to be tried in a reasonable time.

288. The Commission observes that the reasonableness of the time should be weighed in relation to the total duration of the criminal proceeding. In criminal matters this time begins when the first procedural act is filed directed against a given person as one considered likely responsible for a certain offense and ends with the final and firm judgment is handed down.<sup>311</sup>

289. Therefore, according to the terms of Article 8(1) of the Convention, the Commission will take into consideration, in light of the specific circumstances of the case, the three elements that it has taken into account in its consistent case-law, namely: (a) the complexity of the matter, (b) the conduct of the judicial authorities, and (c) the procedural activity of the person concerned<sup>312</sup>, in each of the proceedings.

### 1. *Gader* Case

290. In the criminal proceeding known as *Gader*, the first act proceeding against Ms. Andrade Salmón occurred on April 26, 2000, when the office of the prosecutor took the informational statement from Ms. Andrade Salmón and informed her that she had 48 hours to present evidence of her innocence. The Commission notes that while the preliminary dismissal of the charges was issued in 2007 due to lack of sufficient indicia of guilt, the definitive dismissal of the charges against Ms. Andrade Salmón occurred on December 15, 2011, since the municipality of La Paz appealed the dismissal and subsequently sought to reopen the proceeding. The Commission notes that the total duration of the proceeding was 11 years and 8 months.

291. As regards the appeal and request to reopen the proceeding filed by the municipality against the preliminary dismissal of the charges against Ms. Andrade Salmón, the State indicated that Law No. 1178

<sup>311</sup> I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 129; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 104; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 168.

<sup>312</sup> IACHR, Report on the Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11,506), December 27, 2002, para. 76. See also I/A Court H.R., *Case of López Álvarez*, para. 132; *Case of García Asto and Ramírez Rojas*, para. 166; and *Case of Acosta Calderón*, para. 105; UN Doc. CCRP/C/GC/32, August 23, 2007, Human Rights Committee, General Comment No. 32, para. 35.

and provisions consistent with it establish the obligation of public servants to pursue to their conclusion the proceedings initiated, exhausting all possibilities provided by law, thus based on the likelihood that Ms. Andrade committed crimes of public corruption, the duty of the municipal government of La Paz and the Public Prosecutor's Office to pursue before the competent judicial authorities the determination as to whether she was criminally liable persisted. Accordingly, the State alleges that according to Article 221 of the Code of Criminal Procedure of 1972, applicable to the criminal proceedings involving Ms. Andrade, when dismissal is preliminary, the plaintiff or the prosecutor may reopen the proceeding just once, within one year counted from the date on which this decision was final. It indicated that if in this second proceeding charges against the accused are dismissed once again, the plaintiff or complainant will answer for the damages caused. The State indicated that this procedural decision cannot be considered an action in violation of the rights of the alleged victim.

292. As regards the complexity of the matter, the Commission notes that according to the facts proven, the judge's final decision in the investigative proceeding of January 18, 2007, in which the preliminary dismissal was decreed, determined that Ms. Andrade

...she had no contact with the Gader firm, much less participate in the Gader contracting process. Furthermore, through Executive Order No. 278/99 she had allegedly requested that the process through which the Gader firm was contracted be checked; the contract was then cleared with the City Council. Furthermore, the audit reports found no criminal liability on the part of the accused, who allegedly did not authorize any payment to the firm. Once the payments were discontinued as requested in Communication No. 095/99 of October 5, 1999, the checks had been reprogrammed to cancel the checks to the GADER firm. There is, therefore, insufficient evidence of the crimes being charged, namely fraud, criminal conspiracy and mismanagement of public resources.

293. The Commission observes that the evidence analyzed in the judge's final decision in the investigative proceeding of January 18, 2007, was in the record from the beginning of the investigation in 2000, and that on December 15, 2011, when the Criminal Examining Court (*Liquidador*) of the capital issued the definitive dismissal in favor of Ms. Andrade Salmón, relied on the failure of the municipality of La Paz to submit new evidence. Accordingly, while the State has asked the Commission to consider the complexity of the case and the existence of numerous accused, when it comes to analyzing the possible violation of Article 8 of the Convention, the State has not proven that the case was especially complex as regards the purported participation of Ms. Andrade in the alleged commission of a crime, and that this complexity resulted in it taking 11 years and almost eight months to resolve the case.

294. The Commission also observes that according to the facts proven the criminal proceeding included many accused, approximately 18 persons (including Ms. Andrade Salmón), and that while the accused may have filed many objections and procedural motions, these were provided for by the domestic legislation and regulations. In addition, the Commission recalls that it is the domestic judge, and the authority competent to direct the process, who has the duty to move it along so as to restrict the disproportionate use of actions that may have dilatory effects.<sup>313</sup>

The right to effective judicial protection therefore requires that the judges direct the proceeding in such a way as to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights.<sup>314</sup>

295. The Commission notes, in relation to the actions of the judicial authorities, that while on May 9, 2000 Ms. Andrade asked the Third Criminal Examining Judge to have the matter return to the Public

<sup>313</sup> I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 207.

<sup>314</sup> I/A Court H.R., Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 210.

Prosecutor's Office as the procedure of random assignment had been violated, the Commission is not aware that this requirement was contested. Nonetheless, the Constitutional Court annulled what had been done in the proceeding on October 23, 2000 due to the failure to randomly assign the proceeding and the precautionary measures, on ruling on a motion filed by another co-accused, with which the proceeding had to go back to its initial stage. Accordingly, the Commission notes that almost five months were lost in the processing of the matter due to the deficient action of the judicial authorities.

296. The Commission also notes that on January 21, 2004, the proceedings were once again annulled up to the judge's final decision in the investigative proceeding of August 24, 2002, that is, the procedure was brought back one year and almost five months. In addition, the Commission wishes to highlight that from the information that appears in the record, it appears that there was no significant procedural activity by the State from August 13, 2005, the date on which the extinction of the criminal action against Ms. Andrade and other co-accused was denied, and January 18, 2007, the date on which the judge's final decision in the investigative proceeding was issued, with respect to which the preliminary dismissal was decreed in favor of Ms. Andrade.

297. The Commission considers that in the criminal proceeding it is up to the State to give impetus to it with the proper guarantees, both to safeguard the rights of the persons accused and for the victims, and to protect the interests of society in general. The facts of the instant case demonstrate that the State did not comply with that obligation with respect to Ms. Andrade Salmón and, to the contrary, did not perform significant procedural acts with the aim of determining her legal situation.

298. Accordingly, the Commission concludes that in the instant case the State violated the right of Ms. Andrade to be tried in a reasonable term as established in Article 8(1) of the Convention in relation to Article 1(1) of that instrument.

## **2. The *Street Lamps* Case**

299. In the criminal proceeding known as *Street Lamps*, the first act in the procedure against Ms. Andrade Salmón occurred on December 22, 1999, when the Report of the Deputy Comptroller of Legal Services of the Office of the General Comptroller of the Republic, in which it was indicated that the alleged liability of Ms. Andrade as former chairperson of the Municipal Council stemmed from the fact that she had not sought the opinion of the Legal and Technical Committees, was presented. Consequently the report recommended that the investigative offices of the Public Prosecutor's Office determine whether Ms. Andrade Salmón was criminally liable. The Commission notes that according to the facts proven the proceeding has not concluded to date, since even though charges against Ms. Andrade Salmón were preliminary dismissed on November 22, 2008, and this judgment was confirmed appeal on January 9, 2010, the municipality of La Paz, on February 19, 2011, asked that the proceeding be reopened, and the request was granted.

300. The Commission notes that while the State alleges that the proceeding was complex due to there being many accused (approximately 17 persons including Ms. Andrade), as well as the filing of many motions by them, which was permitted by the legislation in force, it has not pointed to any other factors to justify its complexity. According to the information available to the Commission in the record, the trial of Ms. Andrade was carried out in 2000 because of her signature as chairperson of the Municipal Council of the Municipal Council resolution that approved the contract for the acquisition of Chinese street lamps on August 3, 1998, and still in 2012 her legal situation has not been resolved.

301. In relation to the conduct of the authorities, the Commission observes that on March 25, 2004, the 8<sup>th</sup> District Judge (*Liquidador*) annulled the judge's final decision in the investigative proceeding on December 11, 2002, based on the judgment of the Constitutional Court of March 31, 2003, that resolved that the right to defense of several of the co-accused had been violated, i.e. setting the proceedings back more than a year and three months. In addition, the Commission has not been informed of the procedural activities from January 12, 2004, when the Second Criminal District Court (*Liquidador*) declared that there was no basis for the request for extinction of the criminal action in favor of Ms. Andrade Salmón and four other co-accused,



and November 22, 2008, when the decision of preliminary dismissal of the charges against Ms. Andrade was handed down, i.e. for more than four years.

302. The Commission considers that the State has not proven that the alleged complexity of the proceeding and the activity of Ms. Andrade had justified the delay in the proceeding for more than 11 years. Accordingly, the Commission concludes that in the instant case the right to be tried in a reasonable time was violated to the detriment of Ms. Andrade Salmón.

### **3. *Guaglio Case, or Pensions Case***

303. In the criminal proceeding known as *Fraud on the Office of the Director General of Pensions (Estafa a la Dirección de Pensiones)*, the first procedural act against Ms. Andrade took place on February 17, 2000, when the prosecutor presented the accusation against Ms. Andrade for the alleged crime of dereliction of duties. The criminal proceeding ended on October 27, 2011, i.e. after 11 years and eight months had elapsed, when the Supreme Court issued a judgment in cassation upholding the conviction handed down on January 28, 2004 at trial, and sentencing Ms. Andrade to three years in prison for dereliction of duties; at present that sentence is suspended.

304. The Commission observes that according to the facts proven the criminal proceeding included several defendants (approximately 19) and from the handing down of the guilty verdict in first instance on January 28, 2004, until the judgment was firm (October 27, 2011), seven years elapsed, during which the action of extinction of the criminal action filed by Ms. Andrade and other co-accused was resolved in 2005, and the appeal filed against the judgment by Ms. Andrade and by the Public Prosecutor's Office in 2006. Nonetheless, the State has not presented any type of information that explains why the Supreme Court took almost five years to rule on the motions for cassation and annulment filed by approximately 18 of those found guilty (which included Ms. Andrade, who had been acquitted on appeal in 2006).

305. Accordingly, the Commission concludes that in the instant case there was a violation of the right to be tried in a reasonable time enshrined in Article 8(1) of the American Convention in relation to Article 1(1) of the same instrument to the detriment of Ms. Andrade Salmón.

### **4. *Mendieta Case***

306. In the criminal proceeding known as *Mendieta*, the first procedural act against Ms. Andrade Salmón was on January 25, 2000, when the judge's decision to open an investigation was handed down against her and against other persons. The Commission has not been informed by the parties when exactly the final and firm judgment was handed down, although both parties confirmed that the case was closed. As a result, the Commission considers that it does not have the information necessary to be able to analyze whether the proceeding did or did not unfold in a reasonable time.

### **5. *Mallasa Case***

307. In this case, the first procedural act against Ms. Andrade occurred on January 29, 2001, when criminal proceedings against her and against 35 others were instituted. The Commission is unaware when the final and firm judgment was handed down, although the petitioners indicated in February 2012 that charges against Ms. Andrade Salmón had been dismissed and that as it was not reopened, it was a firm decision. Accordingly, the Commission considers that it does not have the information necessary to be able to analyze whether the process unfolded in a reasonable time.

### **6. *Esin Case***

308. In the *Esin* case, the first procedural act against Ms. Andrade occurred on May 10, 2002, when the First Criminal Examining Judge of the Superior District Court of La Paz instituted criminal proceedings against Ms. Andrade and four other officials of the municipal government. The Commission has not been informed when the final and firm judgment was handed down, although the petitioners reported in

February 2012 that the case was closed and firm after the accusation against Ms. Andrade was rejected. Nonetheless, the petitioners did not inform the IACHR when the case was closed or the reasons the accusation was dismissed. Accordingly, the Commission considers that it does not have the information necessary for being able to analyze whether the proceeding unfolded in a reasonable time.

309. The Commission observes that in the cases known as *Gader*, *Street Lamps*, and *Guaglio*, the criminal proceeding lasted approximately 11 years, in the face of the possibility of being sentenced to eight years in the *Gader* case, three years in the *Street Lamps* case, and in the *Guaglio* she was ultimately convicted and sentenced to a term of three years, which is currently a suspended sentence. In addition, the Commission notes in relation to the *Gader* and *Street Lamps* cases that the impact of the precautionary measures associated with these criminal proceedings have violated Article 7(5) of the Convention in relation to Articles 21, 22, and 1(1) of the same instrument to the detriment of Ms. Andrade Salmón. In this respect, the Commission recalls that it is the state that has the obligation to give impetus to a criminal proceeding, not the persons indicted. The Commission observes that the multiplicity of proceedings with a duration of more than a decade have had a significant impact on Ms. Andrade's life. While the State has the duty to enforce the law and administer justice, over time the State would have to increasingly justify the burden on the person accused based on the principle of presumption of innocence, which has not happened in the instant case.

310. In view of the elements of fact and law developed above, the Commission concludes that in the proceedings known as *Gader*, *Street Lamps* and *Guaglio* or *Fraud on the Office of the Director General of Pensions*, the State violated Ms. Andrade's right to be judged in a reasonable time as established in Article 8(1) of the Convention in relation to its Article 1(1).

### C. Duty to Adopt Provisions of Domestic Law (Article 2 of the American Convention)

311. The Commission considered in its Admissibility Report No. 11/09 that the facts narrated by the petitioners, if proven, tended to establish a violation of Article 2 of the American Convention on Human Rights. Nonetheless, the IACHR observes that the parties did not provide information or arguments in the merits phase to be able to rule in the instant case on the existence of possible violations of Article 2 of the American Convention on Human Rights.

## VI. CONCLUSIONS

312. Based on the considerations of fact and law set forth throughout this report, the Inter-American Commission concludes that:

1. The State of Bolivia is responsible for the violation of the right to personal liberty of Ms. María Nina Lupe del Rosario Andrade Salmón enshrined in Articles 7(1), 7(2), and 7(3) of the American Convention in connection with its Articles 8(2) and 1(1) thereof, in the criminal proceedings known as *Gader* and *Street Lamps*.

2. The State of Bolivia violated the right of Ms. María Nina Lupe del Rosario Andrade Salmón to have access to a simple and effective remedy for the protection of her fundamental rights enshrined in Articles 7(6) and 25 of the American Convention in relation to its Article 1(1) thereof, in the proceeding captioned *Gader*.

3. The State of Bolivia violated Article 7(5) of the American Convention in relation to Articles 1(1), 21, 22(2), and 22(3) of the same instrument in the criminal proceedings known as *Gader* and *Street Lamps*.

4. The State of Bolivia violated the right to be tried in a reasonable time enshrined in Article 8(1) of the American Convention in relation to Article 1(1) of the same instrument in the criminal proceedings captioned *Gader*, *Street Lamps*, and *Guaglio* or *Fraud on the Office of the Director General of Pensions*.

5. The Commission has no elements to rule on a possible violation of article 2 of the Inter-American Convention.

## VII. RECOMMENDATIONS

313. In light of the foregoing conclusions, and mindful that the State paid Ms. María Nina Lupe del Rosario Andrade Salmón economic compensation in the friendly settlement process that unfolded in 2004 and 2005 before this Commission, though it is not aware of the amount, and that on January 29, 2004, the Ninth Criminal Examining Judge was ordered to pay damages in the amount of 2,079.50 bolivianos to Ms. Andrade Salmón,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE BOLIVIAN STATE,

1. That it lift the precautionary measures imposed on Ms. Andrade Salmón in the *Street Lamps* proceeding, if they are still in force.
2. That it adopt all measures necessary to resolve the criminal proceeding *Street Lamps* against Ms. María Nina Lupe del Rosario Andrade Salmón in an expeditious and impartial manner, and safeguarding the rights enshrined in the American Convention, if there is not *res judicata* nowadays.
3. That it adopt the measures necessary to prevent the repetition of similar situations with respect to the disproportionate duration of criminal proceedings and precautionary measures in the conditions noted.
4. That it make adequate reparation for the violations of human rights found in this report, for both material and moral injury, taking into consideration the amounts already received by Ms. Andrade as reparation.

*Signed in the Original*  
José de Jesús Orozco Henríquez  
Presidente

*Signed in the Original*  
Tracy Robinson  
Primera Vicepresidenta

*Signed in the Original*  
Rosa Maria Ortiz  
Segunda Vicepresidenta

*Signed in the Original*  
Felipe González  
Comisionado

*Signed in the Original*  
Dinah Shelton  
Comisionado

*Signed in the Original*  
Rodrigo Escobar Gil  
Comisionado

*Signed in the Original*  
Rose-Marie Belle Antoine  
Comisionada

*Signed in the Original*  
Emilio Álvarez Icaza L.  
Secretario Ejecutivo