

INTERNATIONAL CRIMINAL COURT

COMPLAINT FOR SYSTEMATIC ATTACKS
AGAINST THE BOLIVIAN PEOPLE

August 31, 2020

Submitted by:

Abog. Jose Maria Cabrera Dalence
Attorney General of the State

Abog. Alejandro Roda Rojas
Deputy Attorney General of Defense and Legal Representation of the State

Abog. Yoseland César Pinto
General Director of Defense in Human Rights and Environment

Abog. Fabio Joffre Calasich
Departmental Director of La Paz - Attorney General's Office

El Alto, Bolivia



Table of contents

I. STANDING AND LEGAL REPRESENTATION OF THE ATTORNEY GENERAL'S OFFICE OF THE STATE.....	3
A. Legal representation of the State	3
B. Official Communications	3
II. STATEMENT OF FACTS	4
A. SYSTEMATIC ATTACK ON THE BOLIVIAN CIVIL POPULATION.....	4
B. ANALYSIS OF JURISDICTION OF THE COURT	8
III. ADMISSIBILITY OF THE REPORTED FACTS	9
A. The subsidiarity of the Court and its duty to investigate.....	9
B. Seriousness of the events reported.....	11
C. Multiplicity of victims.....	11
D. Impact and damage.....	11
E. Results of the events.....	12
IV. CHARACTERIZATION OF THE FACTS COMMITTED BY THE DEFENDANTS REGARDING CRIMES AGAINST HUMANITY PROVIDED FOR IN ART. 7.K OF THE STATUTE OF ROME. -.....	12
A. Characteristics of the crimes against humanity in the acts reported. -.....	12
V. INDIVIDUALIZATION AND PARTICIPATION IN THE PUNISHABLE CONDUCT OF EACH DEFENDANT.	15
V.1 Co-perpetration in the planning and execution of blockades for the purpose of attacking the health and well-being of the sick population in Bolivia	17
a) In relation to Juan Evo Morales Ayma.-.....	17
b) Juan Carlos Huarachi. -.....	20
c) Leonardo Loza. -	21
V.2 Indirect co-perpetration through instruments responsible for the commission of the crimes reported. -.....	24
VI. CHARACTERIZED ACTIVITY COMMITTED BY THE DEFENDANTS ADAPTING THEIR CONDUCT TO THE CRIMES AGAINST HUMANITY DESIGNATED IN ART. 7. K. OF THE ROME STATUTE. -.....	29
a) Inhuman acts of a similar nature. -.....	29
b) Causing great suffering or seriously threatening physical integrity or mental or physical health.....	31
VII. EXHIBITS ATTACHED	31
VIII. PRAYER OF RELIEF OF THE PLURINATIONAL STATE OF BOLIVIA.....	31

PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

COMPLAINT FOR INHUMAN ACTS AGAINST THE BOLIVIAN CIVIL POPULATION

I. STANDING AND LEGAL REPRESENTATION OF THE ATTORNEY GENERAL'S OFFICE OF THE STATE

A. Legal representation of the State

1. In accordance with the provisions of Articles 229 and 231.I of the Political Constitution of the Plurinational State of Bolivia (“CPE”) and Article 8, paragraph 1 and 11, of Law No. 064 (“Law 064”), of December 5, 2010, partially modified by Law No. 768, of December 15, 2015, the Attorney General's Office (“*Procuraduría*” or “*PGE*”) is the institution of public legal representation that exercises the supreme function of promoting, defending and safeguarding the interests of the State, among whose functions is to defend judicially and extrajudicially the interests of the State, assuming its legal representation and intervening as a full-fledged procedural subject in all judicial or extrajudicial actions in matters of human rights, within the framework of the CPE and the Law.
2. Likewise, in accordance with the provisions of Article 230.II of the CPE, through Presidential Decree No. 4092, of December 3, 2019, José María Cabrera Dalence was appointed as Attorney General of the State, who by constitutional mandate and the Article 11.I, of Law 064, is the legal representative of the State in the defense of the rights, interests and patrimony of Bolivia, being duly qualified to submit the complaint before the International Criminal Court (“ICC”).
3. Likewise, through Supreme Resolution No. 26215, of December 31, 2020, Alejandro Roda Rojas was appointed as Deputy Attorney General of Defense and Legal Representation of the State, who together with Yoseland César Pinto, in his capacity as General Director of Defense in Human Rights and Environment, designated by Procuradurial Resolution No. 007/2020, of January 6, 2020, are credited to hear and pursue the present case before their authorities.

B. Official Communications

4. The State respectfully requests that the International Criminal Court (“ICC”) send official communications and documents to the following institutional email from the General Director for Human Rights and Environment Defense:
direccionddhh@procuraduria.gob.bo



II. STATEMENT OF FACTS

A. SYSTEMATIC ATTACK ON THE BOLIVIAN CIVIL POPULATION

5. In Bolivia there is a political crisis since in November of last year, the then political party in office and at the head of former president Juan Evo Morales Ayma, resigned as president of Bolivia, affected by a popular request after the Organization of American States evince the commission of acts of electoral fraud promoted by the aforementioned and its political party “*Movimiento al Socialismo*”, during the annulled elections of October 2019.
6. Since then, former President Juan Evo Morales Ayma fled the country, receiving political refuge in Mexico and later in Argentina, from where he continues to lead his political party, the “*Movimiento al Socialismo*” (“MAS”), as well as electoral campaign events aimed at participate in the next presidential elections.
7. During his stay as a refugee in both Mexico and Argentina, Juan Evo Morales Ayma (“JEMA”) committed several acts classified as crimes under Bolivian criminal law, including terrorism, sedition, armed uprising and genocide. These crimes were crystalized due to the orders given by JEMA to its supporters, so them, through hate speeches, indoctrination and logistics of mobilization of people, block strategic points of roads in the national territory, preventing not only the free movement of people but also obstructing the normal commercial exchange of food products with which the population is supplied with food, medicines and others. It should be clarified that this form of protest has always been used by the defendant and his political party, generating serious injury to citizens and the country.
8. Between December 2019 and March 2020 and as a result of the collapse of land communications in Bolivia caused by massive road blockades in the country by JEMA’s organization, the Bolivian Police discovered through judicial expert reports, telephone conversations on the part of JEMA. In these conversations, it was heard that JEMA ordered his party leaders to prevent food from reaching the cities by blocking roads (see evidentiary Annex 1). This was done in order to break the resistance of the cities that would be affected by hunger. In verbatim words of the defendant in that recording he said: “... Let's see if they hold up...”.¹
9. Due to these acts, JEMA and the leaders of its political party were reported to the national authorities. However, the respective criminal proceedings have made no progress to the point that JEMA was not even notified with the initiation of the referred criminal actions.

¹ INFOBAE, “El audio de Evo Morales por el que pidieron su detención: “Hermano, que no entre comida a las ciudades””, <https://www.infobae.com/america/america-latina/2020/07/06/el-audio-de-evo-morales-por-el-que-pidieron-su-detencion-hermano-que-no-entre-comida-a-las-ciudades/>; CLARIN, “Crisis en Bolivia. Difunden un supuesto audio de Evo Morales organizando el bloqueo a La Paz: “Que no entre comida””, https://www.clarin.com/mundo/gobierno-interino-bolivia-difundio-supuesto-audio-evo-morales-organizando-bloqueos-ciudades_0_ZW2TxNlr.html



Denoting an accomplice omission of judicial prosecution on the part of the high authorities of the Prosecutor's Office and the Judicial Branch, which were appointed in the government of JEMA. These road blockades actually took place from the end of November 2019 to the beginning of 2020, causing serious suffering to the population.

10. At the end of March 2020, the Bolivian government issued a package of government measures to stop the emerging community contagion from the COVID 19 pandemic. Among these measures, a total quarantine was issued throughout the national territory with suspension of work activities. Since such measures were prolonged every month, due to the excessive increase in infections and death in the population. Faced with this situation, the Plurinational Electoral Branch (Organo Electoral Plurinacional "OEP"), the highest body that manages the electoral processes in Bolivia, ordered the suspension of the presidential elections scheduled for May 3, 2020. Then it again ordered the suspension of these elections that were again scheduled for September 6, 2020.
11. Unfortunately, the MAS and its leaders together with JEMA opposed all the deferrals of the election dates, claiming that the COVID 19 pandemic was an invention of the ruling party to extend its government functions. Thus, with the sole intention of forcing the holding of elections that would allow this party to return to the Government, JEMA and its leaders began a campaign of pressure measures against the Government, the OEP and the rest of society, to force them not to defer the elections regardless of the risk of increased infections or the preservation of people's lives.
12. As evidenced by the exhibits attached in **annex 2**, on August 3, 2020 the leaders and now denounces Juan Evo Morales Ayma, Juan Carlos Huarachi and Leonardo Loza summoned and organized their followers that supported the MAS and other organizations, mainly in rural areas of the country, to block the roads once again and impede the normal supply of food, services and especially medicines and medical supplies that in those days were of vital necessity given that the public health system was on the verge of collapse with the large number of patients.²

² EL DIARIO, "MAS convoca a bloqueos e insta a la violencia" <https://www.eldiario.net/movil/index.php?n=26&a=2020&m=01&d=20>; EJU.TV, "Mineros llaman a radicalizar bloqueos de caminos y convocan a una marcha desde Senkata", <https://eju.tv/2020/08/mineros-llaman-a-radicalizar-bloqueos-de-caminos-y-convocan-a-una-marcha-desde-senkata/>; PAGINA 7, "Mineros llaman a radicalizar bloqueos de caminos y convocan a una marcha desde Senkata", <https://www.paginasiete.bo/sociedad/2020/8/11/mineros-llaman-radicalizar-bloqueos-de-caminos-convocan-una-marcha-desde-senkata-264198.html>, PAGINA 7, "Central Obrera Boliviana cesaría bloqueos a cambio de celebrar comicios el 11 de octubre", <https://www.elpais.cr/2020/08/12/central-obrera-boliviana-cesaria-bloqueos-a-cambio-de-celebrar-comicios-el-11-de-octubre/>; INFOBAE, "Tensión en Bolivia: los seguidores de Evo Morales mantienen los bloqueos de rutas en gran parte del país"; <https://www.infobae.com/america/america-latina/2020/08/09/tension-en-bolivia-los-seguidores-de-evo-morales-mantienen-los-bloqueos-de-rutas-en-gran-parte-del-pais/>



13. Although the perpetrators of this generalized road blockades claimed that they were exercising their rights to political mobilization for democratic purposes, it was the knowledge and provocation of the death of people that this blockade would cause, which manifested the **CRIMINAL** nature of these events. Because, the special circumstances of the COVID 19 pandemic in which the population was, together with the shortage of oxygen and medical supplies, motivated the blockers and their leaders to target urban populations with the purpose of causing anguish and death in the face of the lack of oxygen, such events were finally consummated.³ (See annex 3).
14. There is abundant evidence, generally from the press media, publications on social networks, as well as explicit pronouncements by the leaders themselves about the purpose of these criminal actions, which show that these were part of a collective criminal purpose or plan on the part of the defendants to cause death in the population. This situation was aggravated by the release of videos on social networks of groups led by the defendants in whom they made hate speeches and calls to take up arms attacking the urban population whom they accuse of being an impediment to their political demands.⁴ The incitement to racism and the invocation of retribution of a historical racial debt are the incendiary narrative that these now reported leaders use to incite their followers to attack those who are not part of their organizations.
15. The road blockades lasted 9 days in which more than 40 people died deprived of medical supplies and medical oxygen, due to the impossibility of movement of these supplies. The government and civil society institutions' attempts to evade the blockades by carrying

³ El periódico, *"Bloqueos de carreteras en Bolivia provocan muertes por falta de oxígeno medicinal"*, <https://www.elperiodico.com/es/internacional/20200814/bloqueos-carreteras-bolivia-muertesoxigeno-medicinal-8075042>; LA TERCERA, *"Escasez de oxígeno por bloqueos agrava crisis en Bolivia"*, <https://www.latercera.com/mundo/noticia/escasez-de-oxigeno-por-bloqueos-agrava-crisis-en-bolivia/4TFJICTJPND7ZLYOAM4ISMB4LM/>; PAGINA 7, *"Falta de oxígeno por bloqueos se cobra una víctima en La Paz"*, <https://www.paginasiete.bo/sociedad/2020/8/7/falta-de-oxigeno-por-bloqueos-se-cobra-una-victima-en-la-paz-263737.html>; OPINION, *"Bloqueos dejan sin oxígeno, falta de muestras de COVID-19 y dificultad en la atención de incendios en Cochabamba"*, <https://www.opinion.com.bo/articulo/cochabamba/bloqueos-dejan-oxigeno-falta-muestras-covid-19-dificultad-atencion-incendios-cochabamba/20200807225408781429.html>; BRUJULA DIGITAL, *"Documentan muertes por falta de oxígeno y cívicos de Oruro presentaron primera demanda contra dirigentes"*, <https://brujuladigital.net/politica/documentan-muertes-por-falta-de-oxigeno-y-civicos-de-oruro-presentaron-demanda-contra-dirigentes>; INFOBAE, *"Tensión en Bolivia: seguidores de Evo Morales mantienen 60 bloqueos de rutas en seis departamentos del país"*; <https://www.infobae.com/america/america-latina/2020/08/08/tension-en-bolivia-seguidores-de-evo-morales-mantienen-60-bloqueos-de-rutas-en-seis-departamentos-del-pais/>; EL COMERCIO, *"Coronavirus: Bolivia reporta más de 40 muertes por falta de oxígeno debido a bloqueo de carreteras"*, <https://elcomercio.pe/mundo/latinoamerica/coronavirus-bolivia-reporta-mas-de-40-muertes-por-falta-de-oxigeno-debido-a-bloqueo-de-carreteras-covid-19-evo-morales-mas-noticia/?ref=ecr>; ULTIMA HORA, *"Denuncian 40 muertes por falta de oxígeno en Bolivia"*, <https://www.ultimahora.com/denuncian-40-muertes-falta-oxigeno-bolivia-n2899896.html>;

⁴ OPINION, *"Aparecen videos de grupos armados que amenazan a Añez; el Gobierno pide tranquilidad"*; <https://www.opinion.com.bo/articulo/pais/aparecen-videos-grupos-armados-piden-renuncia-anez-gobierno-pide-tranquilidad/20200811155835781875.html>



oxygen tanks were in vain.⁵ Although some reached their destination, these were late because the blockers themselves chased the trucks escorted by the military, threatening to dynamite them if they tried to cross the blockades (see evidence annex 4).⁶ This situation was also known to the defendants, since the dramatic situation that occurred and the social demands that were begging the blockers to stop these became of national public knowledge. However, the defendants only responded by further aggravating their actions of blocking and harassing the government convoys that were trying to bring the emergency supplies.

16. The proof of suffering and death within the population is evident with videos of people begging the blockers to allow the passage of oxygen. Likewise, there is evidence that the Government called on the blockers to allow the passage of this supplies, which never happened. As already stated, these actions were also accompanied by broadcasting of images, videos and audios by all media on the part of the leaders in the sense that they would not allow the passage of oxygen, medicines and food to the cities, claiming the sole excuse of being contrary their ideologies.⁷ (see evidence annex 5)

⁵ Agencia EFE, "El Gobierno boliviano traslada oxígeno vía aérea a causa de los bloqueos"; <https://www.efe.com/efe/america/sociedad/el-gobierno-boliviano-traslada-oxigeno-via-aerea-a-causa-de-los-bloqueos/20000013-4312269>. However, the airway transport could not be extended given the high risk of inflammation transporting oxygen tubes on airplanes. This is proven by the following news: BOLIVIA, "Gobierno identifica tres problemas que atraviesa el convoy que traslada oxígeno al occidente"; <https://www.periodicobolivia.com.bo/gobierno-identifica-tres-problemas-que-atravesia-el-convoy-que-traslada-oxigeno-al-occidente/>.

⁶ RADIO FIDES, "Cambian ruta para el traslado de oxígeno a La Paz por amenaza de bloqueos y "dinamitazo"; <https://www.radiofides.com/es/2020/08/12/cambian-ruta-para-el-traslado-de-oxigeno-a-la-paz-por-amenaza-de-bloqueos-y-dinamitazos/>; PAGINA 7, "Convoy con oxígeno cambia de ruta por amenazas de ataques"; <https://www.paginasiete.bo/seguridad/2020/8/12/convoy-con-oxigeno-cambia-de-ruta-por-amenazas-de-ataques-264272.html>; "Murillo anunció cambio de rutas de la caravana de cisternas ante amenazas de explosión de dinamitas"; <https://brujuladigital.net/sociedad/murillo-anuncio-cambio-de-rutas-de-la-caravana-de-cisternas-ante-amenazas-de-explosion-de-dinamitas>; EL ALTEÑO, "Caravana de la vida sufre amenaza de un atentado"; <http://www.elalteno.com.bo/index.php/ciudad/20200813/caravana-de-la-vida-sufre-amenaza-de-un-atentado>; PAGINA 7, "El MAS ve provocación en traslado de oxígeno en convoy escoltado por militares"; <https://www.paginasiete.bo/nacional/2020/8/10/el-mas-ve-provocacion-en-traslado-de-oxigeno-en-convoy-escoltado-por-militares-264079.html>; OPINION, "Carretera está inhabilitada tras dinamitar cerro y oxígeno no podrá llegar a La Paz y Oruro"; <https://www.opinion.com.bo/articulo/pais/dinamitar-cerro-carretera-inhabilitada-oxigeno-medicinal-puede-llegar-paz-oruro/20200807125141781383.html>.

⁷ LA NACION, "Coronavirus: los bloqueos se agudizan en Bolivia y amenazan con agravar la crisis sanitaria"; <https://www.lanacion.com.ar/el-mundo/coronavirus-medio-bloqueos-se-agudiza-tesis-sanitaria-nid2419303>; TARIJA 2000, "La Policía denuncia que bloqueadores no dejaron pasar cisternas con oxígeno pese a resguardo de la Cruz Roja"; <https://tarja200.com/post/la-policia-denuncia-que-bloqueadores-no-dejaron-pasar-cisternas-con-oxigeno-pese-a-resguardo-de-la-cruz-roja>; LOS TIEMPOS, "Issa: Bloqueadores exhiben armas del mismo calibre que se usaron en Senkata y Huayllani"; <https://www.lostiempos.com/actualidad/pais/20200812/issa-bloqueadores-exhiben-armas-del-mismo-calibre-que-se-usaron-senkata>; EL ALTEÑO, "Detectan bloqueadores con fusiles de última generación"; <http://www.elalteno.com.bo/seguridad/20200813/detectan-bloqueadores-con-fusiles-de-ultima-generacion>; TARIJA 200, "El Gobierno detectó que bloqueadores del trópico de Cochabamba portan armas de



17. As will be demonstrated, the defendants are part of a criminal enterprise or structure with common purposes of inflicting death, intimidation and suffering on the urban population in Bolivia. This criminal structure has not been recently created but already has a history of functioning, in the commission of similar crimes and under the same hierarchical leadership structures with JEMA at the head, as well as the participation of Bolivian State institutions supporting the plan of this organization.

B. ANALYSIS OF JURISDICTION OF THE COURT

18. The ICC has competence *ratione temporis* to initiate investigations of the events reported by the Plurinational State of Bolivia, since they occurred after the State ratification, which occurred through Law No. 2398 of May 23, 2002,⁸ this Law that did not formulate any reservation, and according to article 12 of the Rome Statute (RS), has as result the mandatory acceptance of the jurisdiction of the ICC.

19. In addition, such events, which occurred and afflicted the Bolivian people, are after the entry into force of the Rome Statute (RS)⁹ so the complaint submitted respects the time frame provided in article 11 of the RS for the ICC exercise its jurisdiction safeguarding the principle of non-retroactivity of the treaties.¹⁰

20. The Court has also *ratione loci* jurisdiction, thus Article 12. 2 a)¹¹ of the RS establishes that the Court may hear the facts that have taken place in the territory of a State Party and of which the perpetrators or those responsible for the crime denounced are nationals of the State Party, presuppositions that are met in the *sub-lite* case because the defendants Evo Morales Ayma, Leonardo Loza and Juan Carlos Huarachi, have Bolivian nationality.

21. Regarding the *ratione materia* jurisdiction, Article 5 of the EP (sic) outlines that the ICC is the only permanent international court to hear the most serious international crimes, including, crimes against humanity of other inhuman acts represented in article 7.k) of the RS that embodies the reported facts in this brief.

fuego";<https://www.tarija200.com/post/el-gobierno-detecto-que-bloqueadores-del-tropico-de-cochabamba-portan-armas-de-fuego>

⁸ Law 2398 of May 23, 2002 Sole Article.- In accordance with the attribution conferred by Article 59, numeral 12), of the Political Constitution of the State, it is approved and ratified as Law of the Republic. Signed on July 17, 1998, of the Rome Statute of the International Criminal Court, in its 128 articles. ()

⁹ The Rome Statute entry on force was on July 2002.

¹⁰ Article 11.1 of the RS in accordance with Article 28 of the 1969 Vienna Convention on the Law of Treaties between States, whose regulations constitute generally accepted international practice.

¹¹ Article 12 Preconditions to the exercise of jurisdiction

(...)2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;



III. ADMISSIBILITY OF THE REPORTED FACTS

22. The State will demonstrate why the present complaint must be admitted by the ICC Prosecutor, respecting the subsidiarity and complementarity of the ICC, as well as serious enough as a criteria to legitimize any procedure that is initiated within this Court.
- A. The subsidiarity of the Court and its duty to investigate.
23. The Rome Statute in its Art. 14 (Referral of a situation by a State Party), indicates the possibility that every State Party may refer to the Prosecutor of the International Criminal Court, any situation that has the characteristics of the commission of one or more crimes within the jurisdiction of the Court. Being able to request the Prosecutor, the investigation of the facts in order to confirm the charges before the International Criminal Court.
24. Art. 17 of the same normative body, establishes in its Issues of admissibility, that “*The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution*”;
25. In this specific case, the Plurinational State of Bolivia is prevented from carrying out criminal prosecution, because, despite having ratified the Rome Statute in 2002 and having established the imprescriptibility of Crimes against Humanity in article 111 of the Political Constitution of the State of 2009, to date it has not adapted its internal legislation to it; Specifically, it is not classified in its Criminal Code or any Special Criminal Law, Crimes against Humanity consisting of the commitment of inhuman acts to the population that provoke death, attacks against health and others. Paragraph 10 of the preamble and article 1 of the Rome Statute, establish that it will have a complementary character to national criminal jurisdictions.
26. The only criminal type of genocide that Bolivia has adopted in its domestic legislation¹² does not contain the normative objective presuppositions that cover the forms of crime carried out by the defendants. Proof of this is that in more than 15 years of participation by these criminal structures there is no current process or conviction for these crimes that do have this consideration under the Rome Statute (“RS”).
27. The Bolivian State cannot initiate actions in its Ordinary Internal Jurisdiction due to the rule of the Principles of Legality established in art. 113 of the Political Constitution of the State (*Nullum crimen, nulla Poena sine lege praevia, stricta et scripta*) and characterization, understood as the need for the definition of the prohibited act to be sufficiently precise, while the prohibition of analogy requires that the definition is interpreted strictly.

¹² Provided in article 138 of the Bolivian Criminal Code, the crime of genocide characterizes acts that provoke death or cause injury to the Bolivian population and other population segments, or subjects them to conditions of inhumane subsistence, as well as the imposition of measures designed to prevent its reproduction and movement of groups.



28. Likewise, the Bolivian State is prevented from prosecuting the crimes committed by legal means, given that the current government does not have the operational or legal conditions to effectively initiate any criminal action. Operationally, it cannot because the official institutions of the administration of Justice and the Prosecutor's Office are co-opted by officials that support the MAS who obey its slogans, there are extensive precedents of similar cases in which the criminal proceedings initiated have not progressed or had no results (see annex 12). In the same way, the pronouncements of the Legislative body are controlled and manipulated by the majority of more than two thirds that the MAS has, so no investigation or parliamentary control has been initiated to clarify these types of criminal acts, causing this institution be the an operational arm of the decisions of JEMA and its leaders both in Bolivia and abroad.
29. The representatives and senators related to the MAS who form the Plurinational Legislative Assembly complement the criminal work of the defendant by omitting to carry out investigations against the acts denounced. Proof of this is that they even deliberately failed to provide institutional measures so that the blockers who follow their leader, JEMA, allow the oxygen tanks to pass to the cities. In other words, these representatives constitute a sort of co-perpetrator of the reported facts and therefore are essential members of the criminal organization indicated.
30. In addition to being co-perpetrators, the MAS assembly members who control the Legislative Organ are accessory since to date they are preparing a bill to grant retroactive immunity to blockers and their leaders.¹³ This bill is called: Exceptional Law of Prevention of Prosecution whose purpose is to grant a regime to prevent the initiation, proceedings, prosecution and criminal prosecution of the leaders of the *Central Obrera Boliviana*, the Pact of Unity and other organizations that have participated in the mobilizations and road blockades in August 2020. As can be seen, it is a deliberate action on the part of the Legislative Branch to favor with impunity crimes against humanity committed precisely by the organizations led by those now reported (see evidence annex 6). As can be seen, there is an State machinery far from legality and embedded in the Bolivian State that prevents the action of Justice on the crimes that have been committed.
31. Paragraph 10 of the preamble and article 1 of the Rome Statute, establish that it will have a complementary character to national jurisdictions.

¹³ See the bill on the official website of the Chamber of Representatives at: <http://www.diputados.bo/leyes/pl-n%C2%B0-7462019-2020>; ver en medios de comunicación: EL DIARIO, MAS impone "ley de impunidad"; https://www.eldiario.net/noticias/2020/2020_01/nt200115/politica.php?n=60&-mas-impone-ley-de-impunidad; URGENTE.BO, "El MAS recibe duras críticas por ley que ofrece impunidad a bloqueadores", <https://urgente.bo/noticia/el-mas-recibe-duras-cr%C3%ADticas-por-ley-que-ofrece-impunidad-bloqueadores>; PAGINA 7, Yañez presenta proyecto de ley para la «no criminalización» de las protestas sociales, <https://www.paginasiete.bo/nacional/2020/8/17/yanez-presenta-proyecto-de-ley-para-la-no-criminalizacion-de-las-protestas-sociales-264839.html>



32. The ICC acts on the basis of the principle of complementarity with the national jurisdictions of the States Parties, intervening in cases where they do not exercise their jurisdiction or are not in a position to do so. This jurisdiction can be activated by the Prosecutor of the Court, the Security Council of the United Nations and by the States Parties to the Statute of the Court.
33. The International Criminal Court is sought in safeguarding the Supreme Interest of Justice, seeking to avoid impunity in events that are serious enough to trigger prosecution by the Court, based on the material impossibility of triggering an Internal Criminal Prosecution for the non-existence of Crimes Against Humanity in the Bolivian Legal System.

B. Seriousness of the events reported

34. It is necessary to justify the sufficient seriousness of the conducts reported to legitimize any procedure that is initiated within this Court. The RS does not clearly foresee a criterion that allows access to the ICC of cases that are of the necessary importance for an international court in charge of hearing the most heinous crimes to admit a complaint. In this sense, in the opinion of the ICC, these acts must present a qualified seriousness, beyond what could be considered intrinsic to common criminal conduct.
35. Thus, it is necessary to weigh the circumstances that concur in this case and the legal qualification that they may deserve to determine, together with respect for the principle of complementarity, if they exceed this procedural threshold, as required by art. 53.1b) of the RS and rule 48 of the ICC Rules of Procedure and Evidence.
36. Under, the State will demonstrate that the facts reported are serious enough for an investigation by the ICC to be opened, emphasizing the multiplicity of victims, the impact, the damage caused, and the consequences of such facts.

C. Multiplicity of victims

37. In this sense, we must insist on the number of victims of such attacks, which to date amount to more than 40 deaths due to the lack of oxygen supply as part of the medical treatment received by many people infected by COVID-19 and that they are in critical condition in several Hospitals in the country, including children and pregnant women.

D. Impact and damage

38. The behaviors reported reveal the systematic nature of the attacks against the Bolivian population that have caused serious material and nonmaterial damage, there is evidence of damage to public health, physical injuries from the confrontations, as well as serious economic losses.



39. Damages to people's lives have been evidenced by international organizations such as the UN and the OAS, as evidenced in Annex 8.¹⁴ The latter, through the press release C-083/20, stated: “... *that is immoral and unworthy to play politics with people's lives, and absolutely infamous that human rights of public order of the Bolivian people such as their right to life and health are damaged and violated by groups of miserable and petty interests.* (...)

As the Inter-American Commission on Human Rights stated yesterday, the General Secretariat rejects that protesters prevent the passage of oxygen tanker trucks and ambulances necessary to deal the pandemic and makes an urgent call to allow, without interference of any kind, the circulation of the medical personnel, equipment and all the necessary material to care for people affected by COVID-19.” (translated from Spanish)

E. Results of the events

40. In accordance with the foregoing and with article 17 of the RS, the information transmitted in this Complaint constitutes a reasonable basis to believe that the crimes against humanity of other inhuman acts are being committed, which is the jurisdiction of this Court in accordance with article 53.1 a) by leaders and followers of the *Movimiento al Socialismo* identified as the highest responsible Juan Evo Morales Ayma, Leonardo Ledezma and Juan Carlos Huarachi.

IV. CHARACTERIZATION OF THE FACTS COMMITTED BY THE DEFENDANTS REGARDING CRIMES AGAINST HUMANITY PROVIDED FOR IN ART. 7.K OF THE STATUTE OF ROME. -

41. In accordance with the events described above, Juan Evo Morales Ayma, Leonardo Loza and Juan Carlos Huarachi have taken actions inherent to the conduct sanctioned as crimes against humanity in accordance with article 7.1 k) of the Rome Statute.

“Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

A. Characteristics of the crimes against humanity in the acts reported. -

42. Both the jurisprudence and the case-law of trials of crimes against humanity in Latin America and the international courts have required that the acts reported as crimes against

¹⁴ CNN, “La ONU urge la libre circulación de ayuda humanitaria en Bolivia tras bloqueos de carreteras en medio de pandemia”, <https://cnnespanol.cnn.com/2020/08/05/la-onu-urge-la-libre-circulacion-de-ayuda-humanitaria-en-bolivia-tras-bloqueos-de-carreteras-en-medio-de-pandemia/> ; VEA.GLOBAL, “Almagro condena acciones promovidas por el MAS y recuerda que democracia no es imponer ideas”, <https://vea.global/almagro-condena-acciones-promovidas-por-el-mas-y-recuerda-que-democracia-no-es-imponer-ideas/> ; OAS PRESS RELEASE, “Secretaría General de OEA condena bloqueos de camiones con material médico en Bolivia”; https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-083/20



humanity have the characteristics of systematicity, generality, attack on the civilian population and based on motives of discrimination. Next, we describe how the acts reported are incorporated in said legal classification.

Systematic and organized attacks on the part of the MAS organization, the COB and the so-called Unity Pact. -

43. It is important to point out that the inhuman acts that make up this type of crime must represent an attack in its external sphere, the term of which implies any act of violence that is not only limited to military hostilities but all kinds of mistreatment inflicted on people in a massive and organized way..¹⁵ In this sense, the organization led by the defendants perpetrated systematic and organized attacks on the Bolivian population in order to prevent them from accessing public health supplies and services with the direct consequence of causing the death of several people and anxiety in the rest of the population due to the possibility of dying without being able to be treated in public hospitals, or in conditions that allow them to access to medical supplies, treatments and, above all, medical oxygen.
44. Other characteristics of the inhuman acts perpetrated by the defendants and that make up the characteristics of crimes against humanity, is that of systematicity and generality. According to the jurisprudence of the International Tribunal for the Former Yugoslavia, the systematicity does not necessarily imply proving a criminal policy or plan, but it is enough to simply demonstrate the organized nature of the criminal acts.¹⁶ In the facts denounced, it is clearly seen that the acts of generalized blockades throughout the country, they did not respond to unreflective, hasty and disconnected measures carried out by groups of people spontaneously gathered, but to a vertical structure of organization and complex logistics management, which began with the orders and instructions given by their now defendants leaders.
45. The defendants JEMA, Juan Carlos Huarachi and Leonardo Loza, in command of their respective union and peasant organizations, managed to articulate through discursive, operational and executive actions, in addition to coordinated, synchronized blockades throughout the country. Proof of this is the different news reported by the press in the sense that the transportation of medical supplies was continuously obstructed, to the point that not even the army escorting tanker trucks with oxygen in more than 60 tons, could transit the most of a thousand kilometers that separate the city of Santa Cruz de la Sierra to the city of La Paz, the place where oxygen was needed.
46. These actions prevented the passage of convoys escorted by the army and the police. So these institutions had to evade on several occasions the checkpoints and obstacles that arose

¹⁵ ICTY. Kunarac et al. Case. Judgment of February 4, 2009.

¹⁶ ICTY. Blagojevic and Jokic case. Judgment of January 17, 2005. See also the Cases Prosecutor Vs Blaskic, Prosecutor Vs Brdanim and Prosecutor Vs Semanza.



along the way, to the point of deploying police intelligence to detect attempted dynamite attacks against the convoys. Naturally, all these actions involve organized logistics that under no circumstances can be understood as a spontaneous, isolated or fortuitous action that prevented the passage of medical supplies.

Generality of the criminal acts committed. -

47. With regard to the generality, the jurisprudence of the Latin American Courts also understands this form of inhuman attacks against a population. Thus, the Supreme Court of Justice of Colombia has characterized the attack in general terms as an action that excludes the isolated or sporadic act of violence. The events reported were evidently committed in an organized manner which was manifested through the coordinated response of several blockade points in a line of hundreds of kilometers that connected several cities, where the blockers prevented the passage of convoys, transport and communications even against international organizations such as the Red Cross.
48. Another of the characteristics that requires the assessment of the acts as crimes against humanity consists in proving that they were directed against the civilian population. This becomes evident to the extent that those who died and suffered from lack of oxygen were ordinary citizens, inhabitants of cities and rural areas. The former in hospitals or at home, while the latter with the aggravating circumstance that they could not even go to medical centers, since as there is evidence, even ambulances were detained by the blockades due to the intransigence of the blockers, not letting them pass, people died for that cause.
49. Such acts have been actively and co-perpetrators through the contribution of specific and deliberate roles by each of the defendants. In other words, the defendants committed acts aimed at causing serious suffering in the physical integrity and physical mental health of the population, as a means to force a serious social upheaval that would induce the authorities to take a decision outside the Laws such as, setting the date of suffrage for the presidential elections on a date of the preference of the MAS and not in accordance with Bolivian laws.
50. The acts committed by these defendants acquire greater seriousness, recklessness and intentionality given that the acts of obstruction of free movement on the country's highways occurred in circumstances of high social emergency. Precisely when there was a high demand for medical supplies, mainly oxygen, in the public health system to attend to the multiple infections and deaths from COVID 19. It is under these circumstances that the acts of blockades of national roads aggravated the health emergency, since the few medical supplies that needed to be moved from one region to another are prevented from arriving in time to save lives. This is the case of medical oxygen, which, having been exhausted in some cities, could not reach the hospitals in time, resulting in the direct death of more than 40 people in the city of La Paz, as evidenced in Annex 3.



51. As the evidence attached in the aforementioned annexes also confirm, the defendants knew of the damage that would cause to the health and physical well-being of the population, the obstruction of the roads and the consequent impediment to transport medical supplies, mainly oxygen. This is due to the fact that several social sectors, institutions and public personalities requested on many occasions that at least these vital supplies be allowed to pass to save COVID 19 patients who were left without oxygen. However, the calls by the defendants to continue and aggravate the blockades were on the rise and many people not only died, but others were left without care in hospitals and others suffering from food shortages.
52. The acts committed by the defendants were systematically coordinated among the defendants, since Leonardo Loza is the leader of a sector of those mobilized related to the MAS, that is, a group of organizations called the Unity Pact. While Juan Carlos Huarachi is a leader of the *Central Obrera Boliviana* (“COB”). Both organizations fully respond to the directives issued by the MAS party chief, Juan Evo Morales Ayma, directives that were carried out in accordance with the instructions that this individual was issuing publicly (via tweets, radio and television statements). Proof of this is the tight synchronization that these statements with the events recorded by the press and other media, in which the days when the lack of food was continually denounced in the supply centers of the cities and especially the lack of oxygen, and other supplies in public and private hospitals.
53. The desperation of the citizens in the face of the damage to the population caused by those actions, became evident when sectors of the population called on themselves to try to unblock some of the roads (see evidence annex 5), which were responded from these leaders in the sense of requesting their bases to intensify the unblocking measures, even by forming armed militias that openly made hate speeches and threats with weapons against the rest of the population that already suffered from deprivation of supplies and food. (see annex 5)
54. The Political Constitution of the State in Bolivia proposes the recognition of the right to health as a fundamental preferential right of the population and the primary guarantee to be satisfied by the State and citizens. Thus, the preposition exercised by the defendants and their bases, invoking the right to protest and to hold elections within a specified period, is not proportional to the right to health. Even more so when the country is in a health emergency declared as national disaster by the government and faced with the imminence of further infections if the elections were carried out as demanded by the defendants and their followers.

V. INDIVIDUALIZATION AND PARTICIPATION IN THE PUNISHABLE CONDUCT OF EACH DEFENDANT.

The RS provides in its article 25.3 a and b the following:



“3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

*(a) Commits such a crime, whether as an individual, **jointly with another** or through another person, regardless of whether that other person is criminally responsible;*

*(b) **Orders, solicits** or induces the commission of such a crime which in fact occurs or is attempted;”*

55. In accordance with these provisions, it will be shown that, in the commission of the crimes denounced, JEMA and the other co-defendants displayed criminal participation at two specific and simultaneous levels of perpetration, namely: a first level as co-perpetration carried out between JEMA, JCH and LL. A second level of command co-perpetration, in which the defendants order and direct all the blocking actions from their union leadership centers to the blocking sites, controlling at all times the rhythm of the criminal actions.

56. Regardless of whether this criminal organization is considered in the form of a joint criminal enterprise¹⁷ or an organized apparatus of power in which the defendants exercise control of the organization,¹⁸ the truth is that the defendants are part of a criminal organization or purpose common destined and committed to provoke criminal acts with government co-optation motives. This criminal purpose was not only planned on paper or in the twisted mind of some heartless people, but was put into systematic execution with inhuman results. Well, a defenseless population was murdered in hospitals, killing them through one of the worst torments that human beings can suffer; death by suffocation.

57. The criminal commission structure set up by the defendants is easily demonstrable given that it exhibits criminal patterns that fully fit both the form of criminal responsibility by the JCE model, as well as the Organized Power Structure (OPS) characteristic of the JCE theory of the control of the act in its modality functional co-perpetration and indirect perpetration through power structures.

58. Thus, with regard to the JCE, the ICTY jurisprudence where this category of accusation has been used most frequently requires that the participants provide an essential

¹⁷ The concept of the Joint Criminal Enterprise “JCE”, is developed precisely by the jurisprudence of the ICTY, on the idea of a group of individuals who, without the need to belong to any administrative, military, economic or political structure, freely agree to jointly carry out one or more crimes. This has been established by precedents such as the appeal judgment in the Tadic case (supra n. 16), para. 227; appeal judgment in the Krnojelac case (supra n. 16), para. 31; appeal judgment in the Vasiljevic case (supra n. 74), para. 100; appeal judgment in the Kvočka case (supra n. 77), para. 81; appeal judgment in the Stakic case (supra n. 79), para. 64; appeal judgment in the Brdanin case (supra n. 79), para. 364.

¹⁸ The concept of control over the act is framed in a material objective position of the concept of perpetrator, and of the distinction between perpetrator and participation. As stated by PTC I and the Majority of TCI I of the ICC in the Lubanga case, according to this concept, perpetrators are those who control the commission of the crime in the sense that they decide if the act will be committed and how it will be carried out. (Oásolo H., Treaty of Criminal Law.... Op. Cit. Pag., 81)



contribution to the execution of the organized plan with a view to committing crimes of criminal design.¹⁹ This intention must be shared by all those involved in the JCE, regardless of whether they are material perpetrators or leaders. Likewise, the intervention or contributions must be essential, that is, each perpetrator must contribute a behavior that is decisive for the achievement of the criminal purpose proposed by the organization. Said contribution may consist of the provision of the means for the execution of the crime, the planning of the details of the operation or even the intervention in the execution of the preparatory acts, all of them being sufficient for the purpose of being considered an essential contribution, as long as contributors share common criminal purpose.

59. Regarding the model of responsibility through control of the acts, it is perpetrators who control the commission of the crime in the sense that they decide whether the act will be committed and how it will be carried out. In the case of the defendants and their organization, they assume control of the fact under the modality of mediate co-perpetration through functional control of the organization. As will be shown later, the defendants commit inhuman acts through two perpetration schemes: one as co-perpetration between leaders where they carry out relevant contributions of planning, control of the organization and conduct of the facts (co-perpetration as a functional control) and the other as mediate perpetrators through control of the organization or apparatus of power, by means of which they co-opt the will of the blockers and their bases for the achievement of the criminal aims that are proposed.
60. In all cases, the interventions of the defendants are decisive for the realization of criminal activities. This form of approach to the criminal contribution of the defendants in a key and relevant way to guarantee the crystallization of the criminal plan; this has already been recognized by the jurisprudential precedents of the ICC.²⁰

V.1 Co-perpetration in the planning and execution of blockades for the purpose of attacking the health and well-being of the sick population in Bolivia

a) In relation to Juan Evo Morales Ayma.-

61. The defendants planned the blockade system on Bolivian highways with the clear purpose of preventing the circulation of medical supplies, food and others, as they are resources that the cities needed the most, given the precariousness of medical conditions in the

¹⁹ Appeal judgment in the Tadic case (supra n. 16), para. 227; appeal judgment in the Krnojelac case (supra n. 16), para. 31; appeal judgment in the Vasiljevic case (supra n. 74), para. 100; appeal judgment in the Kvočka case (supra n. 77), para. 96; appeal judgment in the Stakic case (supra n. 79), para. 64; appeal judgment in the Brdanin case (supra n. 79), para. 364; appeal judgment in the Krajisnik case (supra n. 80)

²⁰ Lubanga case (ibid), paras. 346-348; confirmation of charges in the Katanga and Ngudjolo case (supra n. 91), paras. 524-526; confirmation of charges in the Bemba case (supra n. 91), para. 350; Banda y Jerbo case (CORRIGENDUM OF THE "DECISION ON THE CONFIRMATION OF CHARGES), ICC-02 / 05-03 / 09-121- CorrRed (of March 7, 2011), paras. 136-138; Abu Garda case (DECISION ON THE CONFIRMATION OF CHARGES) ICC-02 / 05-02 / 09-243-Red (of February 8, 2010), para. 153.



hospital system due to the emergency of the COVID 19 pandemic. Through this type of organization, the defendants seek to provoke death and shock in the civilian population.

62. This type of planning and its respective executions have already been adopted on previous events, such as in November 2019 when an audio broadcast by the same JEMA from Mexico, evidenced the order of this individual to one of his collaborators expressly instructing that “*do not let enter food to the cities*”,²¹ citing the methods of blockades, the form of organization of their followers, etc. This probative antecedent demonstrates the existence of a perfectly organized, effective plan and, above all, with the capacity to remain indefinitely to fulfill JEMA's schemes, which, in the case of the events now reported, was repeated again with fatal results for many innocent people.
63. In the present case, the defendants JEMA, JCH and LL simply reactivated the organized plan to block Bolivian roads that had previously been carried out. Even with the evident disposition to prevent the supply of medical supplies in the cities and the foreseeable consequence of death by suffocation in the hospitals. As previously mentioned; the proof of knowledge and intention of these circumstances in the actions carried out, is evidenced by itself given the health emergency circumstances that are suffered worldwide and of which Bolivia as one of the poorest countries in South America, suffers to a greater extent than the rest of the region. Hence, it is impossible for the defendants to have been unaware of said situation and not pursued it, because even according to the evidence indicated in this complaint, the defendants spoke about the death of the victims and the requests of authorities and civil sectors regarding to lift the blockades, invoking political arguments unrelated to the underlying emergency.²²
64. In the case of JEMA, he intervenes in the planning of the blockades from his residence in Buenos Aires from where he exercises the leadership of his political party, the MAS, despite the fact that his refugee status prevents him from engaging in political activism.²³ Violating said status it intervenes in the activation of the generalized blockade plan as it did previously.
65. In addition, on this occasion, he acts as an international spokesperson through statements to the press and tweets where he seeks to implant distorted ideas to the international public opinion that cover up the reality of what his criminal enterprise is pursuing, covering his conspiracies with political rhetoric and against accusations to the Bolivian government regarding imminent military repressions that never take place. This speech is part of said

²¹ <https://www.youtube.com/watch?v=F9iACoFNGOQ&t=26s>

²² CNN, “*Central Obrera Boliviana dice que levanta bloqueos si las elecciones son el 11 de octubre*”, <https://cnnespanol.cnn.com/2020/08/12/central-obrera-boliviana-dice-que-levanta-bloqueos-si-las-elecciones-son-el-11-de-octubre/>

²³ INFOBAE, “*Horas determinantes en Bolivia: pedidos de renuncias, bloqueos y el fantasma de Evo Morales*” <https://www.infobae.com/america/america-latina/2020/08/10/horas-determinantes-en-bolivia-renuncias-bloqueos-y-el-fantasma-de-evo-morales/>



plan and constitutes an essential impact to the success of its results, since it manages to distract the attention of international public opinion by distorting state efforts for JEMA supporters to drop their actions.

66. The ideological discursive work carried out by JEMA as the highest authority of the MAS is decisive for the cohesion and maintenance of the blockades²⁴ because as is usual within the propagandist machinery of the MAS, the invocation of ideological motives and doctrines of racial vindication is constantly resorted to, ethnic superiority and discrimination in political terms to create a fictitious enemy that is generally symbolized in the urban middle-class mestizo population, which makes up the majority of the population in Bolivia.²⁵
67. In summary, the intervention of JEMA in the planning and contribution of relevant actions for the success of the inhuman attacks in Bolivia against the civilian population are summarized under the following evidentiary milestones:
- 1) Planning and coordination with the defendants JCH and LL in the activation of their criminal plan of blockade structure in Bolivia.
 - 2) International spokesperson by issuing distracting speeches and misrepresentation of the actions that its criminal organization in Bolivia commits against the civilian population.
 - 3) Provides the ideological image to its criminal structure in Bolivia in order to ensure compliance with the provisions issued from Argentina together with the other two co-perpetrators JCH and LL.
68. The evidence of these actions is attached in tweets and press releases that prove these situations. (See annex 9)
69. Along with this work of planning and causal contribution of acts that facilitate the execution of criminal attacks against the population in Bolivia, JEMA carries out, together with the other defendants, a work of mediate co-perpetration of a functional nature, instructing the blocking actions to be carried out, the objectives pursued, the means to be used.²⁶ These actions are carried out from his residence in Argentina. The actions carried out by JEMA

²⁴ TELESUR, “Denuncian intento para frenar paro indefinido en Bolivia”, <https://www.telesurtv.net/news/Denuncian-intento-para-frenar-paro-indefinido-en-Bolivia-20200803-0016.html>

²⁵ PAGINA 7, “El Kollasuyo tiene que liquidar a Bolivia, somos otra nación”, <https://www.paginasiete.bo/nacional/2020/8/14/el-kollasuyo-tiene-que-liquidar-bolivia-somos-otra-nacion-264492.html>

²⁶ FRANCE24, “Bolivia pide ante OEA censurar bloqueos “incitados” por Morales que dejan 31 muertos”, <https://www.france24.com/es/20200808-bolivia-pide-ante-oea-censurar-bloqueos-incitados-por-morales-que-dejan-31-muertos>; INFOBAE, “Tensión en Bolivia: los seguidores de Evo Morales mantienen los bloqueos de rutas en gran parte del país”, <https://www.infobae.com/america/america-latina/2020/08/09/tension-en-bolivia-los-seguidores-de-evo-morales-mantienen-los-bloqueos-de-rutas-en-gran-parte-del-pais/>



from this context demonstrate the degree of intentionality with which it deployed its conduct of directing from its asylum, the criminal actions in Bolivia through the other two co-defendants who carried out the acts through their base of followers blocking roads.

b) Juan Carlos Huarachi. -

70. He is the leader of one of the executive arms of the JEMA organization; this is the Central Obrera Boliviana (“COB”), which historically was an independent organization from the political parties and the MAS. However, during the JEMA government this organization submitted to his instructions, being made up of followers of his political party, who took over the leadership of that institution through bullying, extortion and other actions. Through the COB, the defendant JEMA used on several previous occasions an executive arm made up of people attached to the working class and affiliated with the MAS party, who, using their mobilization capacity, organized together with other related organizations the road blockades of the country causing the attacks already described.
71. In such a way that JCH is a key piece in the planning and coordination of the blockades in Bolivia that it designed together with JEMA and LL to achieve the objective of preventing the arrival of medical supplies to hospitals in all cities. It does this through the leadership that it exercises as the main leader of the COB, which gives it the ability to order, convene and organize broad sectors of workers and manufacturers through ideological deceptions so that they carry out the work of blocking in the more than 70 blocking points on all roads in the country.
72. The intervention of this individual in planning and organization is complemented by the actions deployed with JEMA, to ensure the obedience and cohesion of the workers 'and peasants' organizations, providing a false appearance of legitimacy of their actions with the speeches and announcements that JEMA makes from Argentina and the proclamations and mandates that JCH imparts to its organization.
73. The evidentiary milestones of JCH's participation as a co-perpetrator and conspirator are summarized as follows:
 - 1) Statements to the media in the sense that first there is the candidacy of his MAS party and then the health of Bolivians
 - 2) Public declarations of conditioning to lift the blockades if the institutions comply with their demands²⁷

²⁷ “Central Obrera Boliviana dice que levanta bloqueos si las elecciones son el 11 de octubre”; <https://www.wrcbtv.com/story/42488800/central-obrera-boliviana-dice-que-levanta-bloqueos-si-las-elecciones-son-el-11-de-octubre>



- 3) Specific instructions to his followers to continue the blockades²⁸
74. As can be seen, JCH makes a complementary and decisive contribution in the planning and implementation of the blockade structure with full intentions to provoke irreversible damage to the physical integrity and health of the population.
- c) Leonardo Loza. -
75. He is another leader from the rural peasant unions in the Chapare area. An area that contains the largest coca leaf crops, most of which is directed to drug trafficking, this area being one of the main drivers through financing of the movements that have supported the practices of the MAS.
76. In the financial sphere, the profits generated by the peasant growers of that place have favored the formation of large undercover mafias in the peasant unions who are subjected under inhuman working conditions to the cultivation and harvest of this raw material for cocaine production, having as clients to drug cartels from other countries who distribute the product to other countries.
77. These unions have experienced in the last 30 years a high deployment power, logistics and support from these peasant sectors, due to the financing they receive from drug trafficking mafias. JEMA itself forged his political career in those unions where he also worked, and to date; he is the highest leader of those unions, so his political party, the MAS is a party made up of these unions and projected at the national level under the discourse of the vindication of the peasant and indigenous working classes. However, this speech is only a facade that conceals the actions of safeguard and protection of the clandestine cocaine factories in that area.
78. Under these circumstances, the defendant Leonardo Loza, being an important leader of the peasant organizations of the Chapare, organized a new structure within the criminal organization called the *Pacto de Unidad*. Through this new structure, it exercised the ability to more easily summon the peasants and members of these unions, thus consummating the road blockades and the armed groups that, under intimidation, managed to paralyze land communications in that area. Coincidentally, since this area has a central position in the Bolivian geography, it becomes a strategic place to paralyze most of the terrestrial communications.
79. As can be seen, these three defendants exercise a fundamental form of participation as functional co-perpetration in the commission of crimes against humanity reported. As the substance of this co-perpetration relationship, their intervention in the planning of the

²⁸ EL PAIS, “Campesinos bolivianos vuelven a tomar las calles para exigir elecciones”; <https://elpais.com/internacional/2020-08-05/campesinos-bolivianos-vuelven-a-tomar-las-calles-para-exigir-elecciones.html>



structure and purposes of the blockades, as well as the execution of the instructions and their organization. With full control of the power of the blocking organizations and their criminal results in the health of the population and the inhumane acts caused.

80. Note, Mr. Prosecutor, that the preceding cases of the international criminal system have recognized this type of co-perpetration based on the control over the act, taking as examples the Lubanga and Katanga and Ngudjolo cases, according to which the co-perpetration:

“[...] is rooted in the principle of the division of essential tasks for the purpose of committing a crime between two or more persons acting in a concerted manner. Hence, although none of the participants has overall control over the offence because they all depend on one another for its commission, they all share control because each of them could frustrate the commission of the crime by not carrying out his or her task.”²⁹

81. As has been stated, the participation of the defendants is framed within the requirements of co-perpetration under the concept of control over the act that is required by the precedents of the International Criminal Court, which include objective elements such as:

(i) the defendant must be part of a common agreement or plan between two or more people; and (ii) each and every one of the co-perpetrators, including the accused, must make their essential contributions in a coordinated manner, the sum of which must result in the realization of the objective elements of the crime (joint commission of the crime).³⁰

82. As has been seen, the three defendants make ESSENTIAL contributions to the commission of the criminal acts reported in such a magnitude that if any of them were suppressed hypothetically, the crime could not have been carried out. Especially with the criminal contribution made by JEMA, who not only issues instructions for the implementation of the blockades and the organization of its criminal enterprise, but also provides the speeches that generate an ideology that unifies through distortion, the motivation of the blockers towards the commission of acts that violate human dignity. Without these instructions, speeches or the ideological presence of this character, the forcefulness of the criminal results would surely be much inferior.

83. In addition to this, as already mentioned, JEMA is the campaign manager of the MAS party, which decides whether the pressure measures continue or are lifted according to what it achieves with the crimes committed. In this sense, it can be shown that in a coincidental way it asks for the paralysis of the blockades through social media and automatically these are paralyzed.³¹

²⁹ Katanga and Ngudjolo (ibid), paras. 521 and 525; Banda and Jerbo case (CORRIGENDUM OF THE “DECISION ON THE CONFIRMATION OF CHARGES), ICC-02 / 05-03 / 09-121-Corr-Red (of March 7, 2011), para. 126

³⁰ First judgment in the Lubanga case, paras. 1006 and 1018

³¹ LOS TIEMPOS, “Anuncian acuerdo sobre bloqueos y elecciones; Evo pide diálogo”; <https://www.lostiempos.com/actualidad/pais/20200808/anuncian-acuerdo-bloqueos-elecciones-evo-pide->



84. For their part, JCH and LL are leaders of the two largest operational mobilization arms of blockers of the MAS structure, each organization (COB and coca growers' unions through the *Pacto de Unidad*) exercise mass mobilization capacity in places strategies of the Bolivian territory. In the same way, the hypothetical suppression of the participation of any of these individuals would determine a considerable decrease in criminal results. For example, the leadership exercised by LL over the coca growers' unions is located in the center of the department of Cochabamba, a region that constitutes the geographic center of Bolivia and, therefore, constitutes a central node where most of the roads converge to rest of the cities. So the blockades carried out in that area are severe for the paralysis of the entire highway system of the country and therefore to prevent the arrival of supplies, food and other basic resources to the cities.
85. The coordination between these three co-perpetrators is evident due to the coinciding times in which their public speeches are made. Thus, while on August 2, 2020, JCH's COB publicly announced the start of the blockades,³² JEMA declared on its Twitter account that: "*the meetings between the COB and the TSE should not have a result...*" this dynamic was constantly repeated.
86. On another occasion, during the blockades and the deaths that were taking place due to the lack of oxygen, the government tried to bring convoys of oxygen tanks escorted by the military, to which JEMA statements ensue, stating that it was a provocation to carry oxygen with the military,³³ which again prevented the transportation of the aforementioned supplies.
87. As established by the ICC presuppositions:
- [...] Intervention in the commission of a crime without coordination with the co-perpetrators themselves is outside the scope of co-perpetration in article 25(3)(a) of the Statute.
88. Such a circumstance does not occur in the present case since the coordination of the aforementioned co-perpetrators is clearly presented with the facts already mentioned.

dialogo; INFOBAE, "*Tensión en Bolivia: los seguidores de Evo Morales mantienen los bloqueos de rutas en gran parte del país*"; <https://www.infobae.com/america/america-latina/2020/08/09/tension-en-bolivia-los-seguidores-de-evo-morales-mantienen-los-bloqueos-de-rutas-en-gran-parte-del-pais/>

³² OPINION, "*Inician bloqueos de carreteras*", <https://www.opinion.com.bo/articulo/cochabamba/inician-bloqueos-carretera-valle-alto-occidente-bolivia/20200802222053780652.html>; URGENTE. BO, Inicia bloqueo de carreteras en La Paz, Cochabamba y Santa Cruz <https://urgente.bo/noticia/inicia-bloqueo-de-carreteras-en-la-paz-cochabamba-y-santa-cruz>

³³ "*Evo califica de "provocación" el llevar oxígeno por carreteras donde existen bloqueos*", <https://www.atb.com.bo/sociedad/evo-califica-de-%E2%80%9Cprovocaci%C3%B3n%E2%80%9D-el-llevar-ox%C3%ADgeno-por-carreteras-donde-existen-bloqueos>



89. Another aspect that demonstrates the concurrence of the co-perpetration requirements demanded by the ICC through its precedents is that the defendants had foreseen in their joint plan the commission of criminal acts against humanity, since, as already established, the knowledge of the shortage of medical supplies such as oxygen in the COVID 19 pandemic was of public knowledge. It is precisely because of the damage caused by those blocking measures organized by the defendants and the crimes to be committed that they undertake the criminal plan.
90. However, it must be taken into account that in this case it does not need to be specifically aimed at committing a crime,³⁴ but it is enough that the criminals' planning has assumed as plausible the risk of committing harm to the population:
91. This has been explained in the following terms by the Majority of the TCI in the judgment of the Lubanga case:
- “In the view of the Majority of the Chamber, the prosecution is not required to prove that the plan was specifically directed at committing the crime in question (the conscription, enlistment or use of children), nor does the plan need to have been intrinsically criminal as suggested by the defence. However, it is necessary, as a minimum, for the prosecution to establish the common plan included a critical element of criminality, namely that, its implementation embodied a sufficient risk that, if events follow the ordinary course, a crime will be committed”.*³⁵
92. Certainly, any citizen with average education and knowledge could foresee what would happen if with all this organizational machinery the roads were blocked; it would prevent oxygen and basic supplies from reaching the cities. In other words, by common logic, death by suffocation of those infected by COVID 19 was foreseeable, even more so when this situation was taken as an element of pressure by those reported for their political purposes.³⁶

V.2 Indirect co-perpetration through instruments responsible for the commission of the crimes reported. -

93. The criminal plan deployed by the defendants and the effects on its materialization are manifested with the control and conduct exercised by JCH and LL of their organizations

³⁴ H Olásolo y A Pérez Cepeda, “The Notion of Control of the Crime in the Jurisprudence of the ICTY: The Stakic Case”, (2004) 4 International Criminal Law Review, p. 501

³⁵ First judgment in the Lubanga case (supra n. 3), para. 984.

³⁶ As Olásolo states, the common plan can be aimed at achieving a legitimate goal (for example, ensuring political control of a certain municipality in Bosnia and Herzegovina), and include an element of criminality that will be implemented under certain conditions (the co-perpetrators are aware that, due to the opposition of part of the population of the municipality, a persecution campaign against them could be necessary to obtain political control of it), Tratado de autoria y participacion en derecho penal internacional, Tirant lo Blanch, Valencia, 2013.



of people grouped in unions, whom they instruct and control as instruments through a machinery of hierarchical power. This organizational and hierarchical machinery that the defendants move, meets the requirements of organized power apparatuses, that is, an organized structure characterized by a sometimes vertical hierarchical structure, with distribution of roles and functions among its components, formed of highly replaceable members and its operation is based on a high degree of automation in the fulfillment of orders.³⁷

94. According to TCI of the ICC in the Katanga and Ngudjolo case, this position is based on the consideration that an organized power structure has a life of its own regardless of the identity of its fungible members. Therefore, as Olásolo asserts, the person who controls the organization can, in general, have the certainty that his mandates will be carried out by his subordinates and does not need to worry about who will carry them out.
95. In this type of situation, the leaders only have to issue an order to ensure the commission of the crimes, without the need to carry out any other act of motivation or assistance to the perpetrators. Consequently, it is the leader who maintains control of the act and therefore holds the status of the perpetrator of the crime, because, as a result of the automatic compliance with the orders within the organization, the commission of the crime cannot be stopped by the opposition or resistance from their subordinates, because they are fungible, and if they refuse to implement their decision, they will be replaced by other members of the organization.
96. The TCI of the ICC in its decision on the confirmation of charges in the Katanga and Ngudjolo case has expressly confirmed the inclusion of the concept of indirect perpetration through OPS in the scope of application of art. 25(3)(a) of the RS by stating the following:
- “... the cases most relevant to international criminal law are those in which the perpetrator behind the perpetrator commits the crime through another by means of “control over an organization” (Organisationsherrschaft)...*
- ...Despite some criticism of this doctrine, the Chamber notes that the drafters of the Rome Statute sought to establish a mode of commission in article 25(3)(a) of the Statute which encompasses the commission of a crime through a non-innocent individual (i.e. responsible) acting as an instrument. Accordingly, contrary to suggestions of Germain Katanga's Defence at the hearing on 11 July 2008, assigning the highest degree of responsibility for commission of a crime – that is, considering him a principal – to a person who uses another, individually responsible person to commit a crime, is not*

³⁷ H Köhler, *Strafrecht Allgemeiner Teil* (Berlín, 1997), p. 509



merely a theoretical possibility in scarce legal literature, but has been codified in article 25(3)(a) of the Statute.”

97. Since then, the concept of indirect perpetration through OPS has been applied as such, or as part of the concept of mediate co-perpetration, in many of the cases that have been presented to date before the ICC, including those before the PTCI against Omar Al Bashir, Abu Garda, Muammar Gaddafi, Saif Al Islam Gaddafi and Abdullah Al-Senussi, and those before the PTCII and PTCIII against Jean-Pierre Bemba, Francis Muthaura, Uhuru Kenyatta, William Ruto, Henry Kosgey and Laurent Gbagbo.
98. As we will see below, the defendants and the acts committed meet the requirements for this level of mediate co-perpetration.
99. According to the warrant of Arrest issued by the PTC I against Muammar Gaddafi, his son Saif Al-Islam Gaddafi and the head of Libyan military intelligence Abdullah Al-Senussi, on June 27, 2011, the elements of the concept of indirect perpetration through OPS are as follows:

For a person to be considered as the main responsible for a crime as a mediate perpetrator in accordance with Article 25(3)(a) of the Statute [...] the Court's jurisprudence has established the following common requirements: (a) the suspect must have had control over the organization; (b) the organization must consist of an apparatus of hierarchical and organized power; (c) the execution of crimes must be ensured through almost automatic compliance with the suspect's orders; (d) the suspect must possess all the subjective elements of the crimes; and (e) the suspect must be aware of the factual circumstances that allow him to exercise his control of the fact through another in the case of indirect perpetration

Control over the organization. -

100. Regarding the requirement of control over the organization, it is the requirement that both the suspect and the perpetrators belong to the organization and that there be a superior-subordinate relationship between the former and the latter.
101. In the fact denounced by the attached evidence and the aforementioned circumstances of coordination between speeches, calls for protest and public statements made by JEMA, JCH and LL, it is evident that there is a close correlation between these actions and the responses that in terms of actions carried out by his followers on the roads of the country. Another probative aspect of this situation of control of the co-perpetrators lies in the fact that the three are leaders recognized by their followers. JEMA is the campaign manager of his political party the MAS and president of the coca growers' federations of the Chapare in Cochabamba, while JCH is a senior leader of the COB who calls and organizes its affiliates to carry out blockade actions, marches and threats against the population (see Annex 9). Finally, LL is the leader of the so-called *Pacto de Unidad* that brings together



the coca growers of the Chapare, reinforcing the lack of physical presence of their leader JEMA.

102. There is thus a relationship of rapid response between the statements that these defendants make and the responses to blockade movements, threats and obstructions made by their followers.

Organization as an apparatus of hierarchical and organized power. -

103. As has already been reported, the organization formed by the defendants constitutes an authentic criminal enterprise made up of a plurality of people grouped in sub-organizations with their own functions and points of interaction, which transversally integrate State institutions and sub-national governments that make available of the organization not only economic resources but also institutional powers at the service of the defendants.

104. Thus, at institutional level, there is the MAS political party, through whose members are projected transversally in various state institutions under its control, through which it makes available to its actions economic resources and administrative functions that collaborate in all the phases of their criminal movements. Among these state institutions is the Office of the Ombudsman, the majority of the Plurinational Legislative Assembly, the Prosecutor's office of the State. These institutions, having their leaders those people who were appointed when JEMA was President of Bolivia, still maintain their functions in their respective positions, preserving their loyalty to the defendants and, therefore, providing him with the means to maximize his criminal measures against the population, or in other cases, provide institutional safeguards to grant them impunity through laws or omissions in criminal prosecution.

105. In the first case, the majority of the Legislative Assembly, made up of MAS affiliates, enacts an exceptional bill to grant impunity to the blockers and the acts aimed at depriving the Bolivian population of oxygen. This prevents the exercise of Justice and the criminal prosecution of crimes committed that in normal circumstances could be prosecuted in Bolivia, but which, given the circumstances reported, are impossible to activate. (See again annex 6)

106. Attached in annex 10 is the proposed bill that demonstrates the criminal contribution made by the legislative assembly composed of its majority of members related to the MAS.

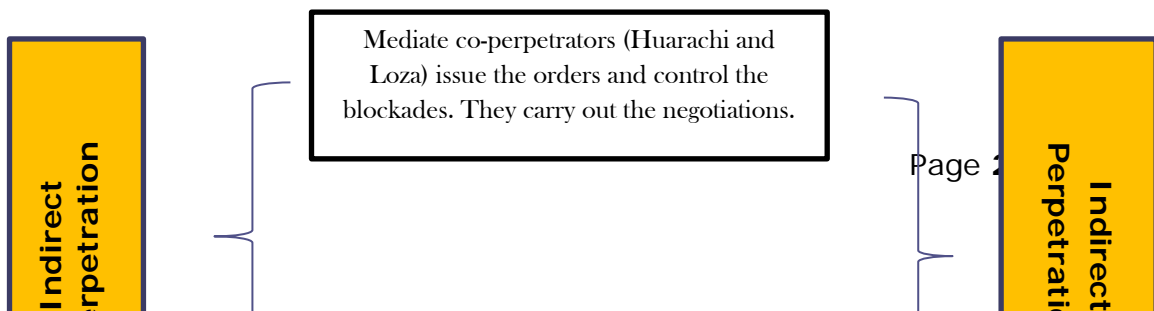
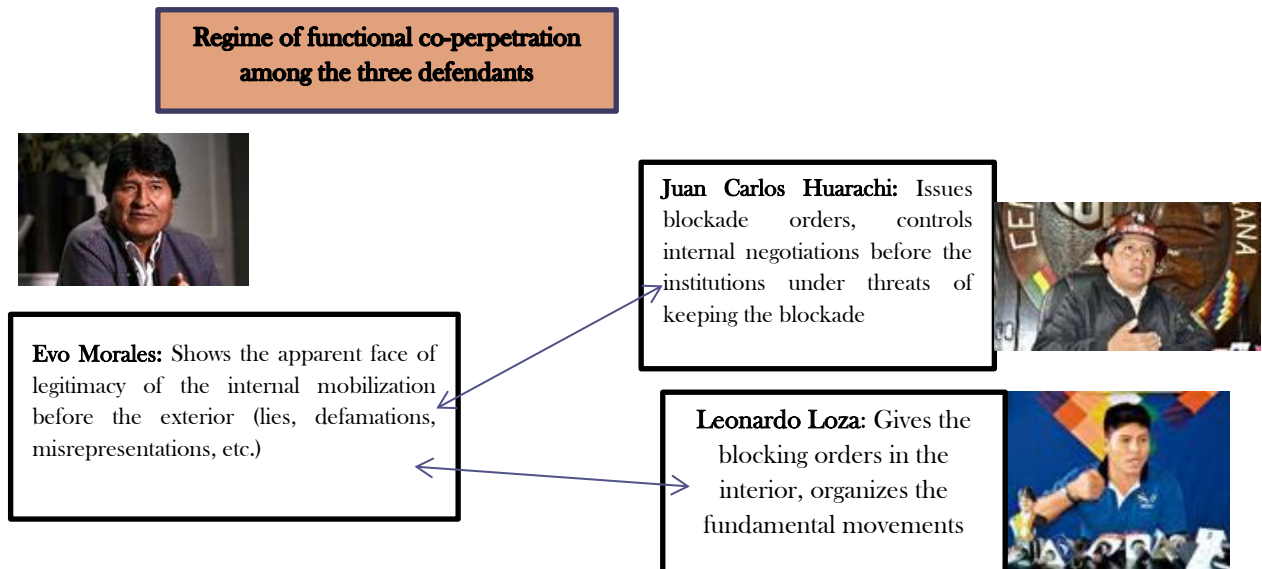
Execution of crimes must be ensured through almost automatic compliance with the suspect's orders. -

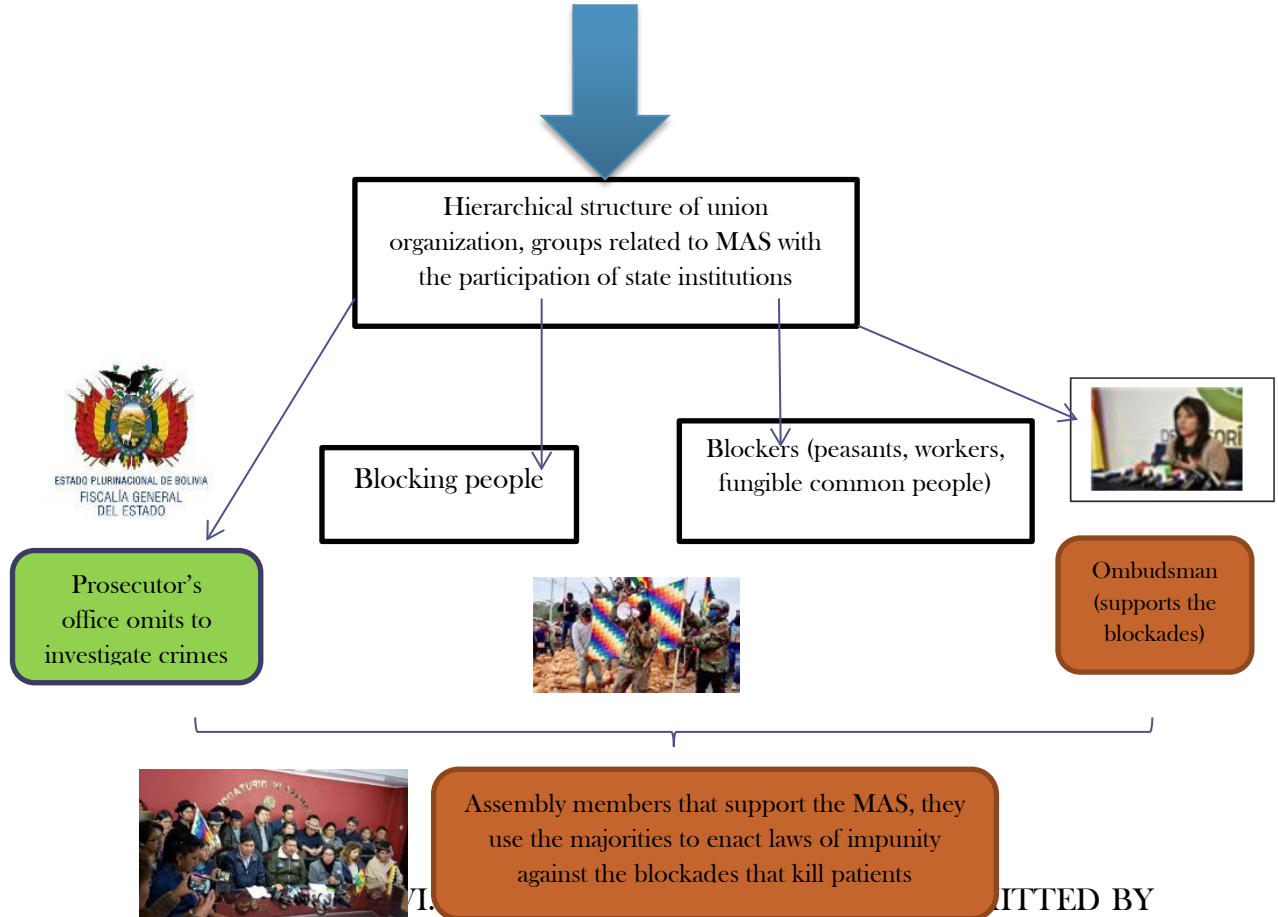
107. However, the executing party for the crimes committed by this power structure is found in the members of unions and unions managed by the defendant LL and JCH. This is the part of the organization where the fungibility characteristics of the perpetrators and a high



predisposition to crime converge; making the acts committed by this organization automated once they are ordered by the defendant.

- 108. Fungibility consists in the organization being broad enough so that it can be affirmed that its members have an interchangeable character, so that, if one of them refuses to comply with the leader's order to commit the crime, another one will automatically replace him, so that the commission of the punishable act is not frustrated as a result of the decision of the first.
- 109. This situation is evidenced by the complaints from peasants and inhabitants of the areas under control by the unions related to the MAS, regarding the fact that many are forced to block or attend the protests under punishment of financial fines or burning of their homes. (see evidence annex 11)





COMMITTED BY THE DEFENDANTS ADAPTING THEIR CONDUCT TO THE CRIMES AGAINST HUMANITY DESIGNATED IN ART. 7. K. OF THE ROME STATUTE.

Article 7.1 (k) of the Rome Statute establishes:

“Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

110. As we will see below, the defendants adapted their conduct to each of the elements that form this crime:

a) Inhuman acts of a similar nature. -

111. An inhuman act is understood to be any deliberate attempt against any condition of the free development of the human personality (physical integrity or health) without which life would be impossible or at least unbearable for any average human being. The inhuman act must be deliberate, that is, committed by another human being or human group with the intention of causing harm without any justifying its cause.



112. The acts committed by the defendants fall into this category of inhumane acts, since the blockades carried out were deliberate with the immediate effect of preventing the arrival of oxygen and medical supplies for the timely cure of COVID 19 patients in the population. The inhumane quality of these behaviors lies in the fact that they were aimed at forcing an electoral political decision that could not be weighed at the same level of proportionality given the urgency of treating patients at risk of imminent death with oxygen. This lack of proportionality between the end pursued by the defendants and the sacrificed rights of those who died and suffered, excludes any consideration of human sensitivity regarding the acts of the defendants.
113. For its part, the similarity to the criminal characterization of Art. 7. K stipulates regarding the required inhuman act, refers to the fact that the denounced inhuman act must be similar to the acts specified in article 7.1, of the Rome Statute.
114. These acts are:
- 1) That the perpetrator was aware of the factual circumstances that determined the nature of the act.
 - 2) That the conduct was committed as part of a generalized or systematic attack directed against a civilian population.
 - 3) The perpetrator has had knowledge that the conduct was part of a generalized or systematic attack directed against a civilian population or has intended the conduct to be part of such an attack.
115. Regarding these parameters, the defendants were aware of the scale of the seriousness of the acts they were committing, both in their dimension of generalized attack against the civilian population and in their dimension of knowledge of the intensity and direction of that attack. In the first case, the public instigations through social networks and public statements made by the defendants were expressly directed towards their so-called “*bases*” with exhortations to the organization of the severe blockades.
116. The narrative handled in these exhortations, in addition to providing the logistics of the media, always culminates in discourses of ethnic and cultural vindication through violent mechanisms and blaming the social classes that are not part of their so-called “*bases sociales*”. That is why, according to evidence annex 6, all the measures of violence in the blockades were systematically directed at those types of people outside the group of the defendants. Finally, it should be noted that the attack by blockades and impediment to the movement of medical supplies was carried out simultaneously in more than 100 blockade points throughout the country, as referred to in evidence annex 7.
117. In the second case, the purpose pursued by these defendants when committing these crimes, which consisted in bending the institutional decisions of the OEP and the Bolivian government so that they maintain an election date in the midst of a pandemic, regardless of the risk of contagion for the population.



118. Another aspect that demonstrates the knowledge that the defendants had regarding the magnitude of the generalized attack on society is that the blocking measures are carried out in a context of extreme defenselessness of the attacked population, a circumstance that magnifies and increases the intensity of the damage caused, as well as contempt for the life and health of the population represented in the minds of the defendants. This attack against the population could not be ignored by the defendants, since the emergency of COVID 19 and the shortage of medical supplies had already been suffering for three months before the commission of the crimes reported.

b) Causing great suffering or seriously threatening physical integrity or mental or physical health.

119. Death due to lack of oxygen is one of the complications of COVID 19 most feared by the population and by any natural perception of human life. Dying from suffocation is one of the forms of suffering that does not need to be described to provoke in any person an anguish or reflex shudder, and if this type of suffering is magnified by the effects of lack of supplies and medical oxygen caused by criminal acts of the defendants, it is clear the presence of this consequence required as an element by the characterization of Art. 7.K. of the Rome Statute.

120. Finally, the serious damage to health and physical integrity is demonstrated by the more than 40 deaths that, according to the documentation attached as evidence, were victims of the blockades carried out by the defendants.

VII. EXHIBITS ATTACHED

Attached as probative material to this brief, annexes, two folders and a compact disc of the referred documentation.

VIII. PRAYER OF RELIEF OF THE PLURINATIONAL STATE OF BOLIVIA

121. Based on the factual, normative and jurisprudential arguments put forward, the Plurinational State of Bolivia requests the Prosecutor of the International Criminal Court to admit the present complaint and the initiation of prosecution in accordance with article 53 of the RS.

122. Likewise, the PGE requests to be informed of the course given at its request, in order to be able to exercise its State representation, in accordance with Arts. 15.3 and 68.6 of the RS.

El Alto, August 31, 2020

Respectfully submitted,



José María Cabrera Dalence
ATTORNEY GENERAL OF THE STATE

Alejandro Roda Rojas
DEPUTY ATTORNEY GENERAL OF DEFENSE AND
LEGAL REPRESENTATION OF THE ESTATE

Yoseland Cesar Pinto
GENERAL DIRECTOR OF DEFENSE IN
HUMAN RIGHTS AND ENVIRONMENT

Fabio Joffre Calasich
DEPARTAMENTAL DIRECTOR OF LA PAZ
ATTORNEY GENERAL'S OFFICE