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FORCED DISAPPEARANCES IN PERU

REPORT ON THE MERITS

(CASE 11.054—TERESA DÍAZ APARICIO, CASE
12.224—SANTIAGO ANTEZANA CUETO,
AND CASE 12.823—CORY CLODOLIA TENICELA TELLO)

REPORT ON ADMISSIBILITY AND THE MERITS

(CASE 11.053—WILFREDO TERRONES SILVA AND CASE
12.225—NÉSTOR ROJAS MEDINA)

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I. SUMMARY

1. Between August 1992 and June 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received five petitions, alleging international responsibility of the Peruvian State (hereinafter “the state,” “the Peruvian State,” or “Peru”) for the alleged forced disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, which took place between 1984 and 1992.

2. The petitioners alleged that their next of kin were detained and then were made to disappear by employees of the Peruvian State between 1984 and 1992, and after many years had elapsed in all cases, the state had not concluded the investigations to establish the whereabouts of the victims and to identify and punish those responsible for the incidents. The petitioners pointed out that these disappearances were part of a systematic pattern of forced disappearance of persons perceived to be associated with the terrorism taking place in the context of the state’s counterinsurgency fight.

3. As for the state, it described the various steps taken with respect to the disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, in order to determine their whereabouts, find out the truth regarding the incidents, and punish those responsible. It underscored the existence of a National Action Plan to investigate forced disappearances and a Mass Grave Exhumation Plan in order to identify thousands of persons who are missing. It argued that years have passed without any final resolution because the cases are complex and that this cannot be imputed to the state.

4. After reviewing the position of the parties, the Inter-American Commission declared the admissibility of cases 11.053 (Wilfredo Terrones Silva) and 12.225 (Néstor Rojas Medina). The Commission concluded, with regard to the merits of all five cases, that the Peruvian State is responsible for the violation of the rights to recognition as a person before the law, to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection as enshrined in Articles 3, 4.1, 5.1 and 5.2, 7.1, 8.1, and 25.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, for the forced disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, in the context of the so-called counterinsurgency fight that occurred in Peru at the time that the disappearances started taking place. The Commission also concluded that the state violated Articles I and III of the Inter-American Convention on Forced Disappearance of Persons. It also violated Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Santiago Antezana Cueto. The Commission also concluded that the state violated the rights to humane treatment, to a fair trial, and to judicial protection provided for in Articles 5.1, 8.1, and 25.1 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of the

¹ According with Article 17 (2) of the Rules of Procedure, Commissioner Francisco Eguiguren Praeli, of Peruvian nationality, did not participate in the deliberation and approval of this case.

next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello. As a result, the Commission drew up the corresponding recommendations.

II. PROCEEDINGS WITH THE IACHR

A. Processing of the cases that have an admissibility report

5. Between 1992 and 2003, the Inter-American Commission received five petitions whose proceedings up to the decision for the admissibility of three of them are explained in detail in the admissibility reports No. 108/11,² No. 163/11,³ and No. 3/12.⁴ In those reports, the IACHR declared that the petitions were admissible and indicated that the alleged incidents could tend to establish a violation of the rights provided for in Articles 3, 4, 5, 7, 8, and 25 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, as well as the obligations set forth in Article I and III of the Inter-American Convention on Forced Disappearance of Persons. Case 12.224 – Santiago Antezana Cueto was also declared admissible for the alleged violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

6. Regarding case 11.054, in the merits stage, the petitioners submitted their observations on the basis of a document on May 28, 2012. As for the state, it submitted its observations on the basis of a communication of November 7, 2012. Afterwards, the Commission has continued to receive communications from the petitioners and the state, which have been duly forwarded to the parties.

7. Regarding case 12.224, in the merits stage, the petitioners submitted a document on February 7, 2012. As for the state, it submitted observations by means of communications on April 24 and May 21, 2012. Subsequently, the Commission continued to receive communications from the petitioners and the state, which were duly forwarded to the parties.

8. Regarding case 12.823, after the admissibility report was issued, the petitioners submitted a document on October 25, 2011, which was forwarded to the state. As for the state, it submitted observations on June 15, 2012 and December 10, 2013, which were duly forwarded to the petitioners.

B. Processing of the cases that do not have a ruling on admissibility

9. Regarding case 11.053, the petition was received by the Commission on August 28, 1992, and proceedings started on September 2, that same year. In April 2004, the Commission requested up-to-date information from both parties and, on the basis of a communication of May 31, 2005, informed them that, by virtue of Article 37.3 of its Rules of Procedure in force at the time, it had decided to postpone dealing with its admissibility until the discussion on its merits had taken place. On the basis of a document on August 15, 2011, the petitioners submitted their observations, which were forwarded to the state, and the latter submitted its observations on the petitioner's position by means of the note of September 22, 2011.

10. With respect to case 12.225, the petition was received by the Commission on November 12, 1998. In December 2004, the Commission requested up-to-date information from both parties and on the basis of the communication of November 9, 2015, it informed them that, by virtue of Article 37.3 of its Rules of Procedure, it had decided to postpone treatment of admissibility until the debate and ruling on the merits of the case had taken place. On May 25, 2007, June 9, 2011, and September 23, 2011, the petitioners submitted observations on the merits. On April 25, 2011, August 31, 2011, and March 19, 2004, the state submitted its observations on the petitioners' position. All the communications were duly forwarded to both parties.

² IACHR, Report No. 108/11, Case 12.823, Admissibility, *Cory Clodolia Tenicela Tello et al.*, July 22, 2011.

³ IACHR, Report No. 163/11, Case 11.054, Admissibility, *Teresa Díaz Aparicio et al.*, November 2, 2011.

⁴ IACHR, Report No. 3/12, Case 12.224, Admissibility, *Santiago Antezana Cueto et al.*, January 27, 2012.

11. In the five cases, the Commission was at the disposal of the parties to reach a friendly settlement, without either party voicing any interest in starting this kind of proceeding.

12. After observing, in the merits stage, that the four cases “focused on similar incidents” and could lead to the disclosure of “an identical pattern of conduct,” in application of Article 29.5 of its Rules of Procedure, the Commission ordered the cases to be joined on the basis of the present joint report on the merits and on the admissibility and merits, as appropriate.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

13. The petitioners of the five cases alleged that their next of kin were the victims of forced disappearances in the context of the so-called counterinsurgency efforts during the internal armed conflict that took place in the eighties and nineties in Peru between armed groups and both the police and the armed forces. They specified that, in this context, there were systematic practices of human rights violations, among which forced disappearances, torture, and extrajudicial executions, especially of persons who were suspected of belonging or sympathizing with terrorists groups such as the Shining Path (Sendero Luminoso) and the Túpac Amaru Revolutionary Movement (Movimiento Revolucionario Túpac Amaru—MRTA).

14. The petitioners of the five cases asserted that the failure to ensure due diligence in the investigations constituted an obstacle to access to justice, so that to date there would be a situation of impunity and an absence of knowledge by the next of kin of the victims about what happened. They alleged that, with the passing of many years, in none of the cases has anything been explained and the whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello are unknown.

15. In all the cases, the petitioners asserted that the next of kin reported the disappearances of the victims to the authorities and filed several judiciary and administrative proceedings. The detail of these judicial cases and proceedings for each one of the cases shall be referred to in the examination of the facts by the Commission on the basis of information provided by both parties. In the present section, a summary of the principal arguments drawn up in the merits stage is being provided.

16. In the case of **Wilfredo Terrones Silva**, the petitioners indicated that the victim had disappeared on August 26, 1992, the date on which he was last seen by a client, when he left his office at five o'clock in the afternoon. The petitioners pointed out that Mr. Terrones Silva was an attorney for the Association of Democratic Lawyers and he was known for defending persons charged with the crime of terrorism. The petitioners asserted that “they made him disappear to obstruct his activities defending persons deprived of liberty for the crime of terrorism.”

17. In the case of **Teresa Díaz Aparicio**, the petitioners pointed out that she worked as an instructor at the School of Social Sciences of the Universidad Mayor de San Marcos. She was a member of the Teachers Association and was also a member of the Social and Legal Services Commission of the same university, monitoring the situation of students who had been detained and teachers involved in judicial proceedings. The petitioners stated that, on August 19, 1992, Teresa Díaz Aparicio went to the school of social sciences of the university and, since then, her next of kin have not had any information about her whereabouts. They contended that, prior to her disappearance, on March 28, 1989, Díaz Aparicio was arbitrarily detained by agents of the Counter-Terrorism Department (Dirección contra el Terrorismo—DINCOTE), and although the charges were dismissed and she was released, members of the Department had continued to harass her, by conducting a violent illegal search of her home. They concluded that the situation of Professor Aparicio fitted the profile of victims of forced disappearances, in view of the sequence of the events, her status as professor of the Universidad Nacional Mayor de San Marcos investigated for the crime of terrorism and the forced disappearance policy aimed at eliminating alleged insurgents or sympathizers and keeping the incidents unpunished.

18. In the case of **Santiago Antezana Cueto**, the petitioners indicated that he was detained on May 7, 1984, along with his uncle Máximo Antezana Espeza, by army troops in the District of Anta, in the province of Acobamba, department of Huancavelica, when he was attending funeral services for his father. They indicated that both were taken to a counterinsurgency base in the area, where both had been tortured and required to dig graves. The petitioners stated that there is no information about the fate or whereabouts of Santiago Antezana since May 14, 1984, date on which his uncle was released. They added that after investigating what had happened, the next of kin of the alleged victim found out that, since December 1983, seven other persons had been confined in the same counterinsurgency base and had afterwards disappeared. They reported that, on September 11, 1993, Mr. Máximo Antezana Espeza was killed in the province of Chanchamayo, department of Junín, allegedly in retaliation for having reported the arbitrary detentions, torture, and disappearances. The petitioners indicated that, 30 years after the incidents, there are not even any charges being brought by the Public Prosecutor's Office against those possibly responsible. They also asserted that, in the national proceedings, there is only Santiago Antezana Cueto as victim but not the other victims who have been reported.

19. In the case of **Néstor Rojas Medina**, the petitioners indicated that, on November 9, 1990, there was a raid by members of the Shining Path in the village of Juan Santos Atahualpa, and that they set the house of Nestor's mother on fire and killed the school principal, who was his cousin. They added that, at that same time, about 100 families of Juan Santos Atahualpa de Tocache, of Alto Huallaga, department of San Martín de Porres, were forced to abandon their land and escape because of terrorist violence. They indicated that, sometime later, because of need for food, shelter, education, and health, Néstor Rojas Medina decided to go back to the village to pick up some things they had left behind and withdraw savings that his mother had in the bank. The petitioners asserted that it was then that Néstor Rojas Medina was detained and made to disappear, on January 26, 1991, by the National Police Force with the military base in the city of Tocache, as a result of a random roundup operation. The petitioners reported that, since that date, nothing is known about Nestor's whereabouts, who was a 20-year-old student majoring in radio broadcasting and working as a trainee at the radio broadcasting company Radiodifusión RBC in Lima.

20. In the case of **Cory Clodolia Tenicela Tello**, the petitioners indicated that, on October 2, 1992, Cory Clodolia Tenicela Tello, retailer and student at the National University of the Center of Peru (Universidad Nacional del Centro del Perú—UNCP), was detained in the city of Huancayo, department of Junín, by troops of the Peruvian Army because she was supposedly a sympathizer of the Shining Path, and since then there is no knowledge about her whereabouts. They added that Peru's Truth and Reconciliation Commission (Comisión de la Verdad y Reconciliación—CVR) considered her as a missing person but even then, 20 years later, the truth and those responsible have not been found.

B. Position of the state

21. The state indicated that the country went through a period of internal political violence that makes it possible to understand the complexities of a "system looking for authentic investigations." It reported that, on the basis of that perspective, the Truth and Reconciliation Commission (CVR) was established to find mechanisms that would guarantee an independent and impartial judiciary, an effective separation of the branches of government, and reconciliation between citizens and government. It also indicated that there is a National Human Rights Plan aimed at implementing the cross-cutting dynamics of the above, throughout the structure of government. It asserted that it was the will of the state to investigate human rights crimes, especially those, such as forced disappearance, that are specified as crimes against humanity. It added that, since the judgment issued by the Inter-American Court of Human Rights in the Barrios Altos case, the obligation to investigate has become more effectively implemented than in the past. It also pointed out that said judgment indicates that the obligation to investigate is either of means or of behavior and the Peruvian State has not failed to fulfill its obligations because it was unable to produce satisfactory results owing to the complexity of the five cases that are the subject of the present report.

22. The state argued that there was no state responsibility with respect to the alleged detention and supposed forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana

Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, nor was the state responsible with respect to Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument.

23. The state reported that, concerning the five cases subject of the present report, it had forwarded formal letters to various authorities such as the Joint Command of the Armed Forces, the General Inspection Office of the Army, divisions of the National Police Force of Peru and the Detainee Monitoring Office, among others, who denied that their institutions had been involved in or had detained the alleged victims. It also submitted information about investigations conducted in each one of the cases, which shall be described below.

24. As for the case of Mr. **Wilfredo Terrones Silva**, the state reported, in its first communications, that he was not detained by any unit of the National Police Force. It also asserted that Mr. Terrones Silva had been indicted as deputy grassroots director and leader of the Shining Path in the province of Jaén and had been deprived of liberty for five years for having perpetrated terrorist attacks. In its communication of August 20, 1998, the state indicated that the authorities presumed that the alleged victim had gone into hiding, and it requested the Commission to declare the case inadmissible because of the petitioner's failure to keep his case active and also because remedies under domestic law had not been exhausted as no complaint had been filed with national authorities.

25. In its communication of September 22, 2011, the state alleged that it had not failed to fulfill its obligation to investigate, indicating that it had taken a series of actions in accordance with police procedures in the investigations of the missing persons, for the purpose of locating Mr. Terrones Silva and reported that the case is pending in the Missing Persons Division of the Criminal Investigation Department of the National Police Force of Peru (División de Personas Desaparecidas de la Dirección de Investigación Criminal de la Policía Nacional del Perú—DIRINCRI PNP).

26. Regarding the case of **Teresa Díaz Aparicio**, the state indicated that, although resolution of the Public Prosecutor's Office of February 2009 had advanced the hypothesis that Ms. Díaz Aparicio had been the target of a forced disappearance, at present there are not enough elements to carry out inquiries in a criminal proceedings process aimed at finding the truth of the events and the perpetrator of the crime and the whereabouts of the alleged victim. The state argued that it was inadmissible to infer and charge the state with international responsibility on the basis of events such as her detention in 1989 and the subsequent search of her home, which occurred three years before her disappearance.

27. It stated that, after the complaint filed by the alleged victim's brother, a police investigation was ordered under the direction of the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves. It stated that, during the investigative activities, statements were taken from next of kin and other persons close to the victim and information was requested from various state institutions, hospitals, and morgues of the province of Lima. It argued that, although the Prosecutor decided to provisionally archive the case, various steps continue to be taken to clarify the facts, as a result of which the state cannot bear international responsibility for the failure to produce results in the investigation.

28. As for the case of **Santiago Antezana Cueto**, the state indicated that, on April 28, 2010, the Third Supraprovincial Criminal Court had brought criminal proceedings against the then director of the Military Base of the province of Acobamba as the alleged perpetrator of the crime of forced disappearance. It indicated that these proceedings have been processed in line with the norms stipulated in domestic laws and ensuring guarantees of due process of law. The state reported that, on November 21, 2011, the National Criminal Court upheld the ruling that was appealed on February 17, 2011 and issued by the Third Supraprovincial Criminal Court of Lima, which stated that the objections being filed to the "underlying crime charged" and the statute of limitations claimed by the accused were without merit. Likewise, by means of the communication of July 9, 2013, it indicated that the criminal proceedings for crimes against humanity, under the category of forced disappearance, to the detriment of Santiago Antezana Cueto was in the oral trial stage, concretely in the stage of hearing statements from witnesses and experts.

29. Regarding the case of **Néstor Rojas Medina**, the state pointed out that, on September 16, 2004, his mother, Ms. Marcelina Medina Negrón, had filed a complaint with the Prosecution Service Specializing in Forced Disappearances, which had opened a preliminary investigation, addressed official letters to various departments, and subpoenaed the complainant to make her statement in the inquiry. The state reported that, on January 18, 2013, the First Corporate Provincial Criminal Prosecution Service of Tocache had declared that it was not admissible to formalize or continue with the preliminary investigation for the crime against humanity, under the category of forced disappearance, perpetrated by members of the National Police Force, in the identification stage, to the detriment of Néstor Rojas Medina. It was also argued that Amnesty Laws Nos. 26479 and 26492 were not applied in the case and there is no linkage between the failure to identify the allegedly accused and/or the perpetrator of the crime and the drafting of the criminal specification of the crime of forced disappearance of Article 320 of the Peruvian Criminal Code, as a result of which it has not been an obstacle for the development of the investigations.

30. As for the case of **Cory Clodolia Tenicela Tello**, the state reported that, on March 5, 2010, the Third Provincial Criminal Prosecution Service of Huancayo formally filed proceedings for the crime against personal liberty and that the Public Prosecutor's Office and the judicial branch continue to process the criminal proceedings and have ordered various steps to be taken to better explain the facts. It reported that registration of Ms. Cory in the Consolidated Registry of Victims was carried out ex officio, because she was included in the Final Report of the Truth and Reconciliation Commission (CVR) and her case is in the assessment and specification stage, indicating that, if the various stages are duly carried out, the next of kin can be included as beneficiaries of the Comprehensive Reparations Plan.

31. In general, the state is requesting that the Commission declare that the claims of the petitioners are without merit and that it order archiving the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, because the state has conducted relevant investigations to secure the truth about the incidents in each one of the cases.

IV. ANALYSIS OF ADMISSIBILITY OF CASE 11.053 (Wilfredo Terrones Silva) AND CASE 12.225 (Néstor Rojas Medina)

A. Jurisdiction *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci* of the Commission

32. The petitioners are entitled by Article 44 of the American Convention to file complaints. Likewise, the alleged victims are natural persons who were under the jurisdiction of the Peruvian State at the time of the alleged incidents. As a result, the Commission has the jurisdiction *ratione personae* to examine the petition. The Commission has the jurisdiction *ratione loci* to hear the petition, because the petition alleges violations of the American Convention that had taken place in the territory of a state party to said treaty. The IACHR has jurisdiction *ratione materiae* because the petition refers to alleged violations of the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

33. Finally, the Commission also has the jurisdiction *ratione temporis* because Peru ratified the American Convention on July 28, 1978 and therefore has the obligation to abide by and guarantee the rights enshrined in the American Convention, which was already in force for the state at the time that the incidents occurred. Regarding the case of Mr. Néstor Rojas Medina, the state argued that there was an absence of temporary jurisdiction regarding the Inter-American Convention on Forced Disappearance of Persons for the Commission's lack of jurisdiction to hear and rule on incidents occurring prior to the date on which the Peruvian State ratified said instrument. The Commission stresses that, by virtue of the ongoing nature of the failure to clarify the crime of forced disappearance, it has the jurisdiction *ratione temporis* regarding the obligations set forth in said Convention, as long as these obligations continue to be unfulfilled at February 13, 2002, date that the ratification instrument was deposited.

B. Admissibility requirements

1. Exhaustion of remedies under domestic law

34. Article 46.1.a) of the American Convention provides that, for a petition filed with the Inter-American Commission to be admissible in conformity with Article 44 of the same instrument, remedies under domestic law must have been attempted and exhausted in conformity with the generally recognized principles of international law. This requirement is aimed at making it possible for national authorities to learn about the violation of a protected right and, if appropriate, to have the opportunity to resolve the case before it is heard by an international body.

35. The requirement of prior exhaustion of remedies is applicable when the national system effectively has resources available that are adequate and effective to remedy the alleged violation. In that respect, Article 46.2 specifies that the requirement is not applicable when: a) the domestic legislation of the state does not afford due process of law for the protection of the right allegedly violated; b) the party alleging violation of his rights has been denied access to the remedies; or c) there has been unwarranted delay in rendering a final judgment under those remedies.

36. The Commission observes that the present petitions refer to alleged forced disappearances perpetrated by civil servants of the Peruvian State to the detriment of the Wilfredo Terrones Silva and Néstor Rojas Medina, as well as the failure to investigate the incidents.

37. The Commission notes that, regarding case 12.225, the next of kin of Néstor Rojas Medina filed the corresponding criminal proceedings with the authorities having jurisdiction. Thus, the first complaint was filed on February 5, 1991 with the Provincial Prosecution Service of Tocache, where it was archived provisionally. A second criminal complaint was filed on September 16, 2004 by Ms. Marcela Medina Negrón, the mother of Néstor Rojas Medina, with the Office of the Provincial Prosecution Service Specializing in Forced Disappearances.

38. As for case 11.053, the Commission notes that the Peruvian State had been informed of the alleged forced disappearance of Mr. Wilfredo Terrones Silva on August 28, 1992, date on which his next of kin had reported his disappearance at the Fifteenth Criminal Prosecution Service of Lima. Afterwards, in its Report on the Situation of Human Rights in Peru on March 12, 1993, the Commission had voiced its concern over complaints about the disappearance of various persons in 1992, among whom there was Mr. Wilfredo Terrones Silva.⁵

39. The Commission has pointed out that, whenever a crime that must be prosecuted ex officio is committed, the state has the obligation to promote and request criminal proceedings and that, in these cases, that was the suitable channel to clarify the facts, try those responsible, and provide the appropriate criminal sanctions against them, in addition to facilitating other modes of reparation. The facts that were described by the petitioners regarding cases 11.053 and 12.225 tend to establish criminal activities that should have been investigated and tried by the state at its own initiative.

40. The Commission observes that the investigation of both cases might have been obstructed by the adoption of Law No. 26479 of June 14, 1995, whose first article reads as follows:

[...] general amnesty for military, police, or civilian staff [...] who are being investigated, reported, indicted, processed or convicted for ordinary offenses or military crimes [...] for all incidents stemming from and caused by, on occasion or as a result of, the counter-terrorism fight [...] from May 1980 to the date of enactment of the present law.⁶

⁵ IACHR. *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III, para. 90, available at: <http://www.cidh.org/countryrep/Peru93sp/iii.htm>

⁶ Law No. 26479 of June 14, 1995, available at: Internet portal of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/imagenes/Leyes/26479.pdf

41. The Commission deems that the fact that more than 20 years have elapsed since the disappearance of Wilfredo Terrones Silva and Néstor Rojas Medina, without any determination of their whereabouts and without any final judgment establishing what had happened and punishing those responsible, has not been justified by the state by any argument that would make it possible to establish a concrete connection between a delay of such magnitude and the alleged complexity of the cases. In that regard, the Commission deems that, in both case 11.053 and case 12.225, the exception of unwarranted delay is applicable in accordance with the terms of Article 46.2.c) of the American Convention.

2. Time-limits to file the petition

42. Article 46.1 b) of the Convention establishes that, for the petition to be declared admissible, it has to be lodged within a period of six months from the date on which the party alleging violation was notified of the final judgment that exhausted remedies under domestic law. This rule, however, is not applicable when the Commission finds that one of the exceptions to the exhaustion of remedies under domestic law has been established, as enshrined in Article 46.2 of the American Convention. In said cases, the Commission must determine if the petition was filed in a reasonable period of time, in line with Article 32 of its Rules of Procedure.

43. As indicated in paragraph 41 above, the Commission concluded that the exception set forth in Article 46.2 c) of the American Convention was applicable. Taking into account that the petition regarding Mr. Wilfredo Terrones Silva was filed shortly after his disappearance and that the petition regarding Mr. Néstor Rojas Medina was filed eight years afterwards, without any progress in the criminal investigation being reported, and taking into account the ongoing nature of the crime of forced disappearance and the alleged denial of justice to the detriment of the next of kin of Mr. Terrones and Mr. Rojas, the IACHR deems that the requirement stipulated in Article 46.1 b) of the American Convention and Article 32 of its Rules of Procedure has been met.

3. Duplication of proceedings and international res judicata

44. Article 46.1.c) of the Convention provides that admitting the petitions is subject to the requirement that the case “is not pending in another international proceeding for settlement” and Article 47 d) of the Convention stipulates that the Commission shall not admit any petition that is substantially the same as one previously studied by the Commission or by another international organization. In the present case, the parties have not highlighted the existence of any of these two circumstances, nor can they be inferred from the case file.

4. Characterization of the alleged facts

45. For purposes of admissibility, the Commission must decide whether or not the petition states facts that could tend to establish a violation as stipulated by Article 47 b) of the American Convention, whether or not the petition is “manifestly groundless,” and whether or not it is “obviously out of order,” according to subparagraph c) of the same article. The standard of appreciation for these matters is different from what is required to decide upon the merits of a petition. The Commission must conduct a *prima facie* evaluation to examine if the petition substantiates the apparent or potential violation of a right guaranteed under the Convention, not to establish the existence of any violation. This examination involves a summary review that does not entail any prejudice or anticipated opinion on the merits of the case.

46. Likewise, neither the American Convention nor the Rules of Procedures of the IACHR require the petitioners to identify the specific rights that were allegedly violated by the state in a case submitted to the Commission, although the petitioners are entitled to do so. It pertains to the Commission, on the basis of the system’s jurisprudence, to determine in its admissibility reports, what provision of the relevant inter-American instruments can be applied and might tend to establish its violation if the alleged facts are proven on the basis of sufficient elements.

47. The IACHR considers that the facts described by the petitioners in cases 11.053 and 12.225 could tend to establish violations of the rights enshrined in Articles 3, 4, 5, 7, 8, and 25 of the American Convention in connection with Articles 1.1 and 2 of said instruments, as well violations of what is set forth in Articles I and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Wilfredo Terrones Silva and Néstor Rojas Media. Likewise, the Commission considers that the facts could tend to establish the violation of rights enshrined in Articles 5, 8, and 25 of the American Convention to the detriment of the next of kin of Mr. Wilfredo Terrones Silva and Mr. Néstor Rojas Medina.

V. PROVEN FACTS

48. The Commission deems it relevant to recall that the jurisprudence of the Inter-American System has indicated that the criteria for appraising evidence are less rigid than those of domestic legal systems and has stated that it can “weigh the evidence freely.”⁷ In that respect, the Inter-American Court has pointed out that it “must apply an assessment of the evidence that takes into account the gravity of attributing international responsibility to a State and that, despite this, is able to create confidence in the truth of the facts that have been alleged.”⁸ The Court has indicated that “it is legitimate to use circumstantial evidence, indications and presumptions to found a judgment, provided that conclusions consistent with the facts can be inferred from them.”⁹

49. The Commission highlights that in cases where a possible forced disappearance is argued, the practice of the American system has taken particular account of the nature of this violation, whose purpose is to eliminate any material evidence of the crime and, generally, it is followed by a series of actions and omissions of state officials seeking to cover up the fact through maneuvers that begin with the refusal of deprivation of liberty, continue with misinformation or providing false information on the whereabouts or fate of the victim and go to the realization of ineffective investigations and diligent little, far from establishing the truth, perpetuate ignorance of what happened to the victim.¹⁰

50. In the same line, the Court has indicated When specifically dealing with a case of alleged forced disappearance, indicatory and presumptive evidence are of special importance because “this type of violation is characterized by the attempt to eliminate any element that would allow the detention, whereabouts, and fate of the victims to be determined.”¹¹

51. Below, the IACHR shall rule about the general context in which the facts of the present case are involved, facts that have been established, and the resulting responsibility of the Peruvian State. Prior to that review, the IACHR shall refer to the historical context in which various allegations of the parties are involved and in which the principal stakeholders of the armed conflict that unfolded in Peru in the eighties and nineties took actions¹².

⁷ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 127 and 128.

⁸ I/A Court H.R., *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012, Series C No. 240, para. 132.

⁹ I/A Court H.R., *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134. Quoting: *Case of the “Las Dos Erres” Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 24, 2009. Series C No. 21, para. 197.

¹⁰ IACHR Report 111/09. Case 11.324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009, para. 56.

¹¹ I/A Court H.R., *Case of González Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134.

¹² On the relevance of context in international criminal law, the International Criminal Court has ruled that “the provision of evidence that could help establish the overall context in which the crimes have been alleged is not only useful for understanding the evidence supporting the charges, but also very relevant and probative with respect to the contextual elements of the crimes under articles 7 and 8 of the Statute “Situation in the Democratic Republic of the Congo, Case Prosecutor vs. Germain Katanga and Ngudjolo Chui Mathieu, ICC-01 / 04-01 / 07 of 30 September 2008, para. 228, available <https://www.icc-cpi.int/iccdocs/doc/doc571253.pdf>.

A. General considerations about the context

1. Indiscriminate violence used by insurgency groups and actions outside the law taken by security forces

52. In its chapter on “armed stakeholders,” the Final Report of the Truth and Reconciliation Commission (CVR) pointed out that, in May 1980, the management of the self-styled Communist Party of Peru—Shining Path (Partido Comunista del Perú—Sendero Luminoso) implemented a project to overthrow the democratic-representative system of government and impose their own ideal of political and social organization in Peru.¹³ The annihilation of community leaders and local authorities, the personality cult around its leader, Abimael Guzmán Reinoso, the extermination of those peasant communities that did not support it, the deliberate use of terror and other conducts contrary to international humanitarian law were some of the tactics chosen by the Shining Path to build its “new state.”¹⁴ According to the CVR, the incidents of violence claimed or attributed to this group led to more than 31,000 deaths, accounting for 54% of the fatalities of the armed conflict, tens of thousands of displaced persons, huge economic losses, and a long-lasting despair in Peru’s population.¹⁵

53. When its “revolutionary people’s war” broke out in 1984, the Túpac Amaru Revolutionary Movement contributed to the insecurity sustained for many years in Peru and to the violation of the basic rights of Peruvians.¹⁶ Among the criminal actions claimed by or attributed to this group are the assaults on commercial establishments, attacks on police stations and the homes of government officials, selected killings of senior government officials, kidnapping of businessmen and diplomats, the execution of indigenous leaders and several deaths because of the sexual orientation or gender identity of the victims.¹⁷

54. In its Second Report on the Situation of Human Rights in Peru, the IACHR stressed that the incidents of violence promoted by the Shining Path and the MRTA “le[ft] behind the loss of life and assets (...), in addition to moral harm as a result of the state of permanent agitation to which Peruvian society in general was subject.”¹⁸

55. In reports on individual cases and on the human rights situation in Peru, the IACHR underscored that, in the context of the fight against the Shining Path and the MRTA, the police and armed forces engaged in practices outside the law that led to severe human rights violations.¹⁹ It also indicated that security agents carried out arbitrary detentions, torture, rape, extrajudicial executions, and disappearances, in many cases against persons without any ties to irregular armed groups.²⁰

¹³ Final Report of the CVR, 2003, Volume II, 1.1 *The Communist Party of Peru Shining Path*, pages 29 and 30, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁴ Final Report of the CVR, 2003, Volume I, Chapter 1, *Periods of Violence*, page 54. Annex 3. Final Report of the CVR, 2003, Volume I, Chapter 3, *Faces and Profiles of Violence*, pages 168 and 169. Annex 1. Final Report of the CVR, 2003, Volume II, 1.1 *The Communist Party of Peru Shining Path*, pages 127 to 130. Annex 4. Final Report of the CVR, 2003, Volume VI, 1.1 *Killings and Massacres*, page 16. Available at: www.cverdad.org.pe/ifinal/index.php.

¹⁵ Final Report of the CVR, 2003, Volume II, 1.1 *The Communist Party of Peru the Shining Path*, page 13, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁶ Final Report of the CVR, 2003, Volume II, 1.4 *The Túpac Amaru Revolutionary Movement*, pages 387, 389, 392, and 431 to 433.

¹⁷ Final Report of the CVR, 2003, Volume VII, 2.30 *Disappearance of Ashaninka Chief Alejandro Calderón (1989)*, 2.39 *Killing of nine inhabitants in Yumbatos, San Martín (1989)*, 2.54 *Kidnapping and killing of David Ballón Vera (1992)*, available at: www.cverdad.org.pe/ifinal/index.php.

¹⁸ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Introduction, B. Framework of Reference, para. 7, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

¹⁹ IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Introduction, B. Framework of Reference, para. 9, available at: www.cidh.oas.org/countryrep/Peru2000sp/indice.htm.

²⁰ IACHR, Report No. 101/01, Case 10.247 et al., *Extrajudicial Executions and Forced Disappearances of Persons*, Peru October 11, 2001, paras. 163 to 179, available at: www.cidh.oas.org/annualrep/2001sp/Peru10247.htm. IACHR, Report No. 57/99, Cases 10.827, Romer Morales Zegarra et al., and Case 10.984, Carlos Vega Pizango, Peru, April 13, 1999, paras. 28 to 44, available at:

[continues ...]

2. Systematic use of forced disappearance in the counterinsurgency fight

56. According to the Final Report of the Truth and Reconciliation Commission (CVR), the state agents involved in counterinsurgency activities adopted forced disappearance as a mechanism of deterrence for militants, potential members, or sympathizers of irregular armed groups. In its words, “[t]he effect of intimidation and the message that other members of the family or community could be also subject to the same violation, could serve as a mechanism to discourage the population from upholding its sympathy, tolerance, or complicity for the insurgent groups.”²¹

57. The CVR concluded that the principal objectives of forced disappearance were: i) to obtain information from the insurgents or suspects; b) to eliminate the insurgent or sympathizer while ensuring impunity; and c) to intimidate the population and force it to be on the side of the forces of law and order.²² The periods with the highest impact stemming from this illegal practice were the two-year period 1983-1984 and the five-year period 1989-1993. According to the CVR, although during the second period “the levels did not reach the levels of 1983-1984, resorting to forced disappearance as a method to eliminate members or persons suspected of belonging to insurgent organizations was much more systematic.”²³

58. The CVR stated that the modus operandi of state agents consisted of:

the selection of the victim, the detention of the person, internment in a place of confinement, eventual transfer to another center of internment, interrogation, torture, processing the information obtained, the decision to eliminate the person, the physical elimination of the person, the disappearance of the bodily remains of the victim, the use of state resources. Throughout the process, the common denominator was denial of the fact itself of detention and not providing any information whatsoever about what happened to the detained person.²⁴

59. With respect to investigations about complaints of forced disappearances committed during the internal armed conflict, the CVR concluded that “most of the cases were followed by inaction or timid and ineffectual actions by the judicial branch of government and the Public Prosecutor’s Office.”²⁵ According to the CVR, that context of impunity for the crimes perpetrated by members of the security forces was aggravated by the coup d’état spearheaded by the then President Alberto Fujimori on April 5, 1992, owing to “clear interference in the judicial branch of government on the basis of massive dismissals of magistrates, provisional appointments, and the establishment of management bodies extraneous to the structure of the judicial system, in addition to the ineffectiveness of the Constitutional Court.”²⁶

60. In a report in January 1998, the United Nations Working Group on Enforced or Involuntary Disappearances observed that:

[... continuation]

www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.827.htm. IACHR, Report No. 1/96, Case 10.559, Julio Apfata Tañire Otavire et al., Peru March 1, 1996, Section I. Background, available at: www.cidh.oas.org/annualrep/95span/cap.III.peru10.559.htm. IACHR, Report No. 37/93, Case 10.563, Guadalupe Ccallocunto Olano, Peru, October 7, 1993, Section I. Background, available at: www.cidh.oas.org/annualrep/93span/cap.III.peru10.563.htm.

²¹ Final Report of the CVR, Volume VI, 1.2. *Forced Disappearances*, page 85, available at: www.cverdad.org.pe/ifinal/index.php

²² Final Report of the CVR, Volume VI, 1.2. *Forced Disappearances*, page 70, available at: www.cverdad.org.pe/ifinal/index.php

²³ Final Report of the CVR, Volume VI, 1.2. *Forced Disappearances*, page 78, available at: www.cverdad.org.pe/ifinal/index.php

²⁴ Final Report of the CVR, Volume VI, 1.2. *Forced Disappearances*, page 84, available at: www.cverdad.org.pe/ifinal/index.php

²⁵ Final Report of the CVR, Volume VI, 1.2. *Forced Disappearances*, page 110, available at: www.cverdad.org.pe/ifinal/index.php

²⁶ Final Report of the CVR, Volume VIII, *General Conclusions*, paras. 123-131, available at: www.cverdad.org.pe/ifinal/index.php

The vast majority of the 3,004 cases of reported disappearances in Peru occurred between 1983 and 1992, in the context of the Government's fight against terrorist organizations, especially the Sendero Luminoso (Shining Path). In late 1982, the armed forces and police undertook a counterinsurgency campaign and the armed forces were granted a great deal of latitude in fighting Sendero Luminoso and in restoring public order. While the majority of reported disappearances took place in areas of the country which had been under a state of emergency and were under military control, in particular in the departments of Ayacucho, Huancavelica, San Martín, and Apurímac, disappearances also took place in other parts of Peru. (...) ²⁷

61. In its March 1993 report on the human rights situation in Peru, the IACHR underscored that, in the five years prior to publication of the above-mentioned document, 43 final rulings on petitions reporting the forced disappearance of a total of 106 victims were adopted. The IACHR also stressed that, between 1987 and 1990, Peru was the country with the highest number of disappearances in the world. ²⁸

62. In various final reports on the merits, the IACHR concluded that, between 1989 and 1993, "there existed in Peru a systematic and selective practice of forced disappearances, carried out by agents of the Peruvian State" and stressed that "that official practice of forced disappearances was part of the 'fight against subversion', although in many cases it harmed people who had nothing to do with the activities related to dissident groups." ²⁹ The IACHR also concluded that, in the nineties, forced disappearances were not investigated seriously and those responsible, as executors of an official state plan, enjoyed de facto impunity that was virtually absolute.

63. As for the Inter-American Court, it has statements about the prevalence, for many years, of a government policy that promoted the perpetration of selective killings, forced disappearances, and torture of those persons it suspected of belonging to insurgent groups in Peru. ³⁰ Thus, it has contended that, from the start of the eighties up to the end of the year 2000, Peru experienced a conflict pitting armed groups against agents of the police and armed forces. ³¹

64. The Court has established that the systematic practice of forced disappearances was fostered by the widespread situation of impunity for the severe human rights violations that prevailed at that time, promoted and tolerated by the absence of judicial guarantees and the ineffectiveness of judicial institutions to tackle systematic human rights violations. ³²

3. Universities – front line for state repression

²⁷ Report of the Working Group on Enforced or Involuntary Disappearances. UN Document ONU E/CN.4/1998/43, January 12, 1998, para. 297, available at: www2.ohchr.org/spanish/issues/disappear/annual.htm

²⁸ IACHR, *Report on the Human Rights Situation in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section I. Background, C. Human rights problems identified by the Commission, paras. 16 and 17, available: www.cidh.oas.org/countryrep/Peru93sp/indice.htm

²⁹ IACHR, Report No. 51/99, Case 10.471, *Anetro Castillo Pezo et al. v. Peru*, April 13, 1999, para. 75, available at www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.471.htm. See also the final reports on the merits Nos. 52/99, 53/99, 54/99, 55/99, 56/99, and 57/99, published by IACHR in 1999 and available at: www.cidh.oas.org/casos/99sp.htm

³⁰ I/A Court H.R., *Case of La Cantuta v. Peru*. Judgment of November 29, 2006, Series C No. 162, paras. 83 and 84; *Case of Gómez Palomino*, Judgment of November 22, 2005. Series C No. 136, para. 54.1 and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C, No. 21, para. 60.9.

³¹ I/A Court H.R. *Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations, and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 197.1, and *Case of Osorio Rivera and family members v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 26, 2013, Series C No. 274, para. 53.

³² I/A Court H.R. *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 92, *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 136; and *Case of Osorio Rivera and family members v. Peru. Preliminary Exceptions, Merits, Reparations, and Costs*. Judgment of November 26, 2013, Series C No. 274, para. 58.

65. Bearing in mind that, in the present case, at least two of the alleged victims were associated with universities at that time of their disappearance, the Commission believes it is relevant to refer to information about the context of how these institutions and their members were affected in the framework of the counter-terrorism fight.

66. Between 1988 and 1992, the universities were deeply troubled and became one of the principal hubs for the internal armed conflict in Peru.³³ Universities were also benchmark institutions for the upsurge of the Communist Party of Peru—Shining Path, because it was a strategic forum for both disseminating its ideology and for recruiting militants among their students and teachers.³⁴ This led to the stigmatization of these institutions which were the target of violence by both insurgent groups and the state, according to the Final Report of the Truth and Reconciliation Commission (CVR):

The behavior of the state and the forces of law and order with respect to university can be characterized in three stages. Initially, they were indifferent to the problem of violence in the universities; then, in a second stage, with the presence of the state, the way was paved for repression by the police and paramilitary forces, which started in 1987 (it tended to be indiscriminate and out of proportion); and in the third stage, it was defined by the militarization of university activities, which since 1991 identified universities as the targets of the counterinsurgency activities of the regime of Alberto Fujimori. According to the testimonies taken by the Truth and Reconciliation Commission, we can say that the state, using the forces of law and order, was the protagonist of violence that hit the university community hardest [...].³⁵

67. In February 1987, the National Police Force decided to interfere in various university centers of Peru, entering the universities of San Marcos, La Cantuta, and UNI in Lima, where hundreds of students were detained.³⁶ As of that date, state interventions in universities became more and more frequent, leading to mass detentions.³⁷ In 1988 and 1989, at the Universidad Nacional Mayor de San Marcos and Cantuta, deaths were recorded, as well as the disappearances of students and teachers.³⁸ In 1991, military bases were installed in the universities of San Marcos, Cantuta, and UNI, Callao and Hermilio Valdizan. In its Final Report, the CVR pointed out that “the universities of San Cristobal de Huamanga, Hermilio Valdizan de Huanuco, Callao, Huancho, and San Marcos, among others, were affected by the counterinsurgency strategy of detentions, disappearances, and destruction of infrastructure during the authoritarian regime of the nineties because of the installation of military bases on university campuses [...]”³⁹

68. With respect to the Universidad del Centro de Peru, the final report of the CVR indicated that:

³³ Final Report of the CVR, Lima 2003, Volume III, First Part, Second Section, Chapter 3.6. The Universities, page 581 and Volume V, chapters 2.18 to 2.21, available at: www.cverdad.org.pe/ifinal/index.php

³⁴ Final Report of the CVR, Lima 2003, Volume III, First Part, Second Section, Chapter 3.6. The Universities, page 581, available at: www.cverdad.org.pe/ifinal/index.php

³⁵ Final Report of the CVR, Lima 2003, Volume III, First Part, Second Section, Chapter 3.6.3. The State’s Counterinsurgency Strategy in Universities, page 610, available at: www.cverdad.org.pe/ifinal/index.php

³⁶ Final Report of the CVR, Lima 2003, Volume III, First Part, Second Section, Chapter 3.6.3. The State’s Counterinsurgency Strategy in Universities, pages 611, available at: www.cverdad.org.pe/ifinal/index.php

³⁷ Final Report of the CVR, Lima 2003, Volume V, First Part, Third Section, Chapter 2. Stages of Violence in UNMSM, page 627, available at: www.cverdad.org.pe/ifinal/index.php

³⁸ Final Report of the CVR, Lima 2003, Volume III, Chapter 3, pages 621-633, available at: www.cverdad.org.pe/ifinal/index.php.

³⁹ Final Report of the CVR, Lima 2003, Volume VII, page 339, available at: www.cverdad.org.pe/ifinal/index.php

At the UNCP, as in the other centers of higher learning, military intervention took place peacefully, the military proceeded to clean the facilities and paint the walls. Their work was made easier by support from public opinion and the majority of the university community.

The military base was installed in the university cafeteria at the entrance of the university campus and remained there for many years [...]

The figures show that, despite an apparent environment of calm that was being experienced, it was precisely in 1992 that the largest number of selective forced disappearances of students took place.⁴⁰

B. Proven facts regarding each victim in the present report

1. Wilfredo Terrones Silva (case 11.053)

69. According to the narrative of the petitioners, Wilfredo Terrones Silva, husband of Frida de Terrones, was seen for the last time on August 26, 1992. He was an attorney for the Association of Democratic Lawyers and had been the defense attorney for persons charged with the crime of terrorism.⁴¹

70. They also described how his next of kin went to police stations, hospitals, and service centers looking for information on the whereabouts of Wilfredo Terrones Silva. On August 28, 1992, his disappearance was reported to the Fifteenth Criminal Prosecution Service of Lima and then reported to the Missing Persons Department of the National Police Force on September 1, 1992.⁴²

71. According to a note on July 26, 2001 by the daily newspaper *Caretas*, which published an interview with Clemente Alayo Calderón, former agent of the Grupo Colina, from his prison cell in the penitentiary of Canto Grande, this person referred to what was done in the Grupo Colina to alleged terrorists, “how they were massacred.” The note indicated that Alayo had said that “killing a member of the Shining Path was, according to him, proof of bravery.” He indicated that the bodies were deposited in black polypropylene bags and then tied up [...]. The next destination, according to Alayo, was the sea or some abandoned place. According to the note, Alayo indicated that one of the bodies thrown into the sea was that of the “democratic lawyer” Wilfredo Terrones.⁴³

72. In its Report on the Situation of Human Rights in Peru of March 12, 1993, the Commission voiced its concern about the reports of the disappearance of several persons between May and August 1992, among whom there was Mr. Wilfredo Terrones Silva.⁴⁴ The Commission indicated that the name of Mr. Wilfredo Terrones Silva is registered in the 1980-2000 List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission.⁴⁵

73. The state indicated that, on November 10 [no year indicated], staff of the National Police, when appearing at the building where Mr. Terrones had his law office, interviewed Mr. Ovidio Romani Alcarraz, who identified himself as the owner of the above-mentioned building and said that, in early August,

⁴⁰ Final Report of the CVR, Lima 2003, Volume V, page 685, available at: www.cverdad.org.pe/ifinal/index.php

⁴¹ Annex 1. Communication from the petitioners of August 15, 2011.

⁴² Annex 1. Communication from the petitioners of August 15, 2011.

⁴³ Annex 2. Newspaper note published July 26, 2001 in the daily *Caretas*.

⁴⁴ IACHR, Second Report on the Situation of Human Rights in Peru, IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III. SITUATION AS OF APRIL 5, 1992, paragraph 90, available at: www.cidh.oas.org/countryrep/Peru93sp/iii.htm.

⁴⁵ Final Report of the Truth and Reconciliation Commission, List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, page 408, E#15-1004974, available at:

<http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSanexo4/ListaMuertosyDesaparecidos.pdf>

he had leased one of the offices to Mr. Terrones Silva, where the latter had stayed for a period of 20 days, “then had disappeared and that he did not know his whereabouts.”⁴⁶

74. The state reported that “Mr. Terrones Silva was indicted as Deputy Grassroots Director and leader of the Shining Path in the province of Jaén.” It also indicated that, before his disappearance, “Dr. Terrones Silva had been confined in the prisons of Chiclayo and El Frontón for five years for having perpetrated terrorist attacks in the province of Jaén.”⁴⁷

75. The state also reported that, after “examining the control ledger of the inmates, the name of Dr. Terrones Silva was not found there, with a reference that, in the month of August 1991, he visited his brother Terrones Silva Ricardo, inmate in the CRAS Castro Castro for the crime of terrorism.”⁴⁸

76. In its communication of March 19, 1993, the state indicated that it should be “presumed that Dr. Terrones Silva (...) had gone into hiding, as there is no evidence or clue to establish that a kidnapping is involved.”⁴⁹ On the basis of a report dated June 25, 2005, the state also presumes that “said person had gone into hiding because there is no clue or evidence of a kidnapping, death, or confinement in a penitentiary.”⁵⁰

77. In its communication of September 22, 2011, the state indicated that, although there is no information that could lead to the whereabouts of Wilfredo Terrones Silva, the case has to be resolved by the Missing Persons Division of the Criminal Investigation Department of the National Police Force of Peru.⁵¹ Report No. 46-11-DIRINCRI-PN./DIVIPD-BD-1, of May 27, 2011 points out:

Report No. 1712-05-DIRINCRI-PNP/DIVIPD-BPD1 dated June 25, 2005 is hereby registered and reports on the enlargement of the investigations that took place to locate Wilfredo TERRONES SILVA; it also indicates that it was not possible to obtain any positive result for locating his whereabouts...

At present, there is no information that could lead to the whereabouts of Wilfredo TERRONES SILVA, and therefore it is a case still pending resolution in this Sub-Unit of the National Police of Peru.⁵²

78. Report No. 1712-05-DIRINCRI-PNP/DIVIPD-BPD1 dated June 25, 2005 sets forth the steps taken by the state to locate the whereabouts of Mr. Terrones Silva:

- a) The Intelligence Office was requested a photocopy of Report No. 2270-IC-GOE-DIPD-DININCR of July 10, 1998, associated with the investigations that were carried out.
- b) The Unit of Certifications and Archives of the Migration and Naturalization Department was requested to provide the record of his migratory movements.
- c) The Computer Services Area of the DIVIPD was requested his possible IC background and references that might have been registered.
- d) The Head of the National Penitentiary Institute was requested to provide information about the confinement and release of Wilfredo Terrones Silva.
- e) DINCOTE was requested information (...).

⁴⁶ Annex 3. Communication from the state: Note 7-5-M/093 of March 19, 1993.

⁴⁷ Annex 3. Communications from the state: Note 7-5-M/093 of March 19, 1993

⁴⁸ Annex 4. Communication from the state: Note 7-5-M/125 of April 12, 1993.

⁴⁹ Annex 3. Communication from the state: Note 7-5-M/093 of March 19, 1993.

⁵⁰ Annex 5. Information submitted by means of the communication from the state of September 22, 2011. Note No. 7-5-M/668.

⁵¹ Annex 5. Information submitted by means of the communication from the state of September 22, 2011. Note No. 7-5-M/668.

⁵² Annex 5. Information submitted by means of the communication from the state of September 22, 2011. Note No. 7-5-M/668.

- f) On June 27, 2004, staff of the DIVIPD went to the home of the missing person and was able to interview Mr. Manuel Landázuri Gómez, who indicated that he was the brother-in-law of the missing person and that he had not seen him since August 26, 1992, date on which he had disappeared, and that he knew that his sister (wife of the missing person), who was not present at the time, did not know his whereabouts either.
- g) OFINOPE was requested to broadcast to all the UU PNP of Metropolitan Lima interconnected by email to search for and find Wilfredo Terrones Silva.
- h) It was requested that the search and location of Wilfredo Terrones Silva be broadcast nationwide.
- i) Information about the disappearance of the person Wilfredo Terrones Silva was entered into the website www.peruanosdesaparecidos.com
- j) Access was obtained to the website of RENIEC, in order to find the information file on Wilfredo Terrones Silva.⁵³

79. This report concluded that “the DIVIPD, on the basis of Multiple Letter No. 130-ADD-HH.EM-DININCRI of July 3, 1998, undertook the investigations regarding the case in order to locate the person of Wilfredo TERRONES SILVA, on the basis of whose results it drafted Report N| 2270-IC-GOE-DIP-DININCRI of July 10, 1998, whereby it indicated the many steps that were taken to look for and locate the person, concluding that, despite these steps, it was not possible to locate the above-mentioned person.”⁵⁴

80. At September 2011, there were proceedings for the crime of terrorism against Wilfredo Terrones Silva, according to information from the Information System Supporting Prosecution Services (Sistema de Información de Apoyo al Trabajo Fiscal—SIATF) of the Public Prosecutor’s Office.⁵⁵ According to information provided by the petitioners, the state has not started a new investigation on the disappearance of Mr. Terrones that would make it possible to learn facts or to identify and individualize those responsible for his disappearance.⁵⁶

2. Teresa Díaz Aparicio (case 11.054)

81. Teresa Díaz Aparicio, 44 years old at the time, was last seen on August 19, 1992. Her parents were Alberto Díaz Uriarte (deceased) and Graciela Aparicio Pastor (deceased November 5, 1997, after the disappearance of her daughter). The alleged victim had two brothers, Federico Díaz Aparicio and Roberto Levi Aparicio (deceased after the disappearance their sister). Teresa Díaz Aparicio had a B.A. in sociology and was working as a teacher for the School of Social Sciences at the Universidad Mayor de San Marcos and was a member of the Teachers Association. She was also a member of the Social and Legal Services Commission of the UNSM, monitoring the situation of detained students and teachers with legal proceedings.⁵⁷ The alleged victim lived in the district of Rimac with her mother and brothers.

82. On March 27, 1989, years before her disappearance, at about 23:30, personnel from DINCOTE searched the home of Teresa Díaz Aparicio, supposedly in the context of a police operation to detain Walter Enrique Zúñiga Porras, during which they confiscated a series of documents. In official letter No. 2412-2002-DIRCOTE PNP- Sec. 2, there is an indication that “because various [illegible] were found accusing her of being a militant of the PCP-SL,”⁵⁸ she was detained.

⁵³ Annex 5. Information submitted by means of the communication from the state of September 22, 2011. Note No. 7-5-M/668.

⁵⁴ Annex 5. Information submitted by means of the communication from the state of September 22, 2011. Note No. 7-5-M/668

⁵⁵ Annex 6. Official letter No. 6437-2011-MP-FN-SEGFIN of May 31, 2011 and its annexes, submitted by means of the communication from the petitioners of August 15, 2011.

⁵⁶ Annex 1. Communication from the petitioners of August 15, 2011.

⁵⁷ Annex 7. Statement made by Teresa Díaz Aparicio; Report No. 276-04-DIRINCRI-PNP/DIVNHON.GOP of March 31, 1989, page 395, appearing in Annex 3, Volume II, of the communication from the petitioners of May 22, 2012.

⁵⁸ Annex 8. Second Supraprovincial Criminal Prosecution Service: Case file No. 11-2007; Report 775-D3-SDIRCOTE of March 28, 1989, page 115. Annex 3, Volume I, of the communication from the petitioners of May 22, 2012.

83. On March 31, 1989, when she was detained, Ms. Aparicio was questioned about the papers that had been confiscated in her home and about her affiliation to the Shining Path, as well as about her opinion on the attacks perpetrated by that insurgent organization, to which she replied that she did not belong to said party and disagreed with the methods that were described because she felt that “it was not the right way to tackle social problems [...]”.⁵⁹

84. Regarding the reasons for the detention of Professor Aparicio, in the report issued on April 5, 1989 by the National Police Force, the following was indicated:

II. CONCLUSIONS

[...]

F. It is proven that [...] and Teresa DIAZ APARICIO (35); belongs to the support system of the PCP-SL, in charge of providing housing, food, medical assistance, and other needs that are requested by the militants of this insurgent-terrorist group.⁶⁰

85. The alleged victim was transferred to the 41st Public Provincial Penitentiary of Lima, so that relevant investigations could be conducted for the alleged crime of terrorism.⁶¹ On April 7, 1989 the Provincial Criminal Prosecution Service ordered that she be released because it believed that “on the basis of the house search carried out, the statements that were made, the affidavits from criminal and judiciary records that were gathered, as well as the steps that were taken, at present there is no evidence to file for the conviction of the accused TERESA DIAZ APARICIO [...]”.⁶²

86. After her release, on August 11, 1989, a habeas corpus petition was filed complaining that, the day before, members of the National Police Force, without any search warrant, violently broke into her home where her mother was. Since they were unable to find her at home, the security personnel carefully searched her belongings and told her mother that she should go the following day to the Counter-Terrorism Department, without leaving any written notification or subpoena.⁶³

87. On August 17, 1989, the habeas corpus petition was ruled inadmissible on the basis of the investigatory statements received from the Deputy Chief and Chief of DIRCOTE, who stated they “had not ordered the personnel of said police agency to enter the house of the person referred to, nor did they notify her to go to department on the eleventh day of the current month, because to date there has been no investigation against the above-mentioned person, [...] that it has not been established that in DIRCOTE there might be a pending investigation against the complainant that might be threatening her freedom by a possible detention.”⁶⁴

88. In statements made to judicial authorities, Federico Díaz Aparicio indicated that, after these incidents, his sister told him she felt she was being watched by the National Police.⁶⁵

⁵⁹ Annex 7. Statement made by Teresa Díaz Aparicio. Report No. 276-04-DIRINCRI-PNP/DIVNHON.GOP of March 31, 1989, pages 395, Annex 3, Volume II, of the communication from the petitioners of May 22, 2012.

⁶⁰ Annex 9. Communication from the petitioners of May 22, 2012, Annex 3, National Police Force of Peru, Report No. 888-D3-SDIRCOTE of April 5, 1989.

⁶¹ Annex 9. See document of the National Police Force of Peru, Report No. 888-D3-SDIRCOTE, page 17, folio 188. Communication from the petitioners of May 22, 2012, Annex 3.

⁶² Annex 10. Public Prosecutor’s Office. Resolution issued by the Provincial Criminal Prosecution Service of Lima, April 7, 1989. Communication from the petitioners of May 22, 2012, Annex 4.

⁶³ Annex 11. Habeas corpus petition filed against the Director of DIRCOTE for threat of arbitrary detention to the detriment of TERESA DIAZ APARICIO on August 11, 1989. Communication from the petitioners of May 22, 2012, Annex 5.

⁶⁴ Annex 11. Court notification for a habeas corpus petition filed against the Director of DIRCOTE for threat of arbitrary detention to the detriment of TERESA DIAZ APARICIO, August 17, 1989. Communication from the petitioners of May 22, 2012, Annex 5.

⁶⁵ Annex 12. Habeas corpus petition appeal filed by Federico Aparicio with the Judge of the Nineteenth Criminal Court of Lima, on May 10, 2002. Communication from the petitioners of May 22, 2012, Annex 6.

89. On August 19, 1992, Teresa Díaz Aparicio left home located in the district of Rimac, Lima, with her brother Federico Díaz Aparicio heading to the bus stop so she could go to work at the Universidad Nacional Mayor de San Marcos, where she was a teacher.⁶⁶ According to the testimony of her brother, the alleged victim never reached her workplace, never came back home, never again contacted her family, friends, next of kin or co-workers. In his statement at the inquiry he indicated that “the only time that his sister Teresa Aparicio had gone absent without contacting anyone was after her first detention in 1989.”⁶⁷ According to the testimonies appearing in the case file, the mother of the alleged victim had asked about her among her co-workers, friends, and other relatives. She had also gone to hospitals, clinics, the central morgue of Lima and Callao, and to the police, without obtaining any information about the whereabouts of her daughter.⁶⁸

90. On July 31, 2002, Federico Díaz Aparicio gave his testimony to the Truth and Reconciliation Commission:

The declarant indicates that, in August 1992, he accompanied his sister <TERESA DIAZ APARICIO> to the bus stop and never again saw her, she was presumably detained by personnel of DINCOTE on a public street of the District of {RIMAC}, {LIMA}. Although there are no witnesses, this allegation is based on the continuous monitoring of the victim and her previous detention by DINCOTE.

[...]

The fact was not reported out of fear, her family continued to be monitored by DINCOTE and the victim’s mother was suffering from very ill health [...] ⁶⁹.

91. Petronilla Viviana Becerra Raimondi, the first cousin of the mother of the alleged victim, in statements made at the Public Prosecutor’s Office, indicated that before her death, Graciela Aparicio Pastor had told her that her daughter left home to go to work in 1992 and never came back. She also stated that the mother of Teresa Díaz Aparicio:

Had looked for her in the morgue, at the Universidad San Marcos itself with the authorities of the school where she worked, without obtaining any response, and even reported the incident to the National Police Force and resorted to a human rights commission.

[...]

[B]efore dying, my aunt Graciela Aparicio Pastor mentioned that, a few days after the disappearance of her daughter, she found a piece of clothing “underwear with dry blood” (sic) in her daughter’s bedroom, which she presumed had been entered into by the door of the hallway, which she found forced open, as a result of which she presumed that they had killed her daughter.

Regarding any specific detention, she did not mention it, but she did remember that she said that, on one occasion, the police entered the School of Liberal Arts of the Universidad

⁶⁶ Annex 13. Preliminary inquiry statement made by Federico Díaz Aparicio. Volume II, page 667. Case file No. 11-2007 of the Second Supraprovincial Criminal Prosecution Service. Communication from the petitioners of May 22, 2012.

⁶⁷ Annex 13. Preliminary inquiry statement made by Federico Díaz Aparicio. Volume II, page 667. Case file No. 11-2007 of the Second Supraprovincial Criminal Prosecution Service. Communication from the petitioners of May 22, 2012.

⁶⁸ Annex 14. Report adding to Report No. 16-2005-JUS/CNDH-SE/CESAPI and annexes with the transcription appearing in the Annex submitted by the state by means of Note No. 7-5-M/087 of February 16, 2005: Ministry of the Interior, Official letter No. 124-2005-IN/0105 of January 26, 2005.

⁶⁹ Annex 15. Testimony No. 1000974 given by Federico Díaz Aparicio at the Truth and Reconciliation Commission, July 31, 2002. Annex 7 of the communication from the petitioners of May 22, 2012.

Nacional de San Marcos in order to take out teachers and students and they took them with them, among whom there was her daughter, Teresa Díaz.⁷⁰

92. On December 20, 2005, Federico Díaz Aparicio made a statement for the inquiry at the Fifth Prosecution Service, indicating the following:

My mother Graciela Aparicio Pastor told me that she assumed that they had killed her [...]. I did not report this out of fear for what the neighbors would say and fear of retaliation by the police against our family.⁷¹

93. On September 2, 1992, the IACHR notified the Peruvian State about the petition regarding the presumed forced disappearance of Professor Teresa Díaz Aparicio. Afterwards, in its report on the human rights situation in Peru on March 12, 1993, the Commission voiced its concern about reports of the disappearance of various persons between May and August 1992, among whom there was Ms. Teresa Díaz Aparicio.⁷² The name of Teresa Díaz Aparicio appears on the list entitled “List of Dead or Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000,” also documented by the Office of the Human Rights Ombudsperson (Defensoría del Pueblo).⁷³

94. On November 17, 1992, the National Counter-Terrorism Department of the National Police Force of Peru submitted Report No. 223-93-EMG/DIPANDH whereby it reported it had sent letters to the Joint Command of the Armed Forces, Office of the General Inspector of the Army, divisions of the National Police Force of Peru (DININCRI-PNP, DINCOTE-PNP, and VII-RPNP), and the Detainee Monitoring Office.⁷⁴ This report indicates the following:

[...]

2. The reports received by this Department, coming from the above-mentioned police bodies, specify that the person Teresa DIAZ APARICIO is not registered as a detainee or as someone intervened by PNP personnel, it is also indicated that, after examining the corresponding files, there is no complaint whatsoever filed regarding her disappearance nor are there any records in the police jurisdictions of the above-mentioned bodies.⁷⁵

95. On February 27, 2002, the 19th Criminal Court of Lima ruled that the habeas corpus petition filed by Federico Díaz Aparicio on the 25th day of that same month and year was inadmissible and pointed out:

CONSIDERING: That the detention of Teresa Díaz Aparicio took place in the year nineteen ninety-two, that the petitioner has no knowledge about where his sister might be at present,

⁷⁰ Annex 16. Public Prosecutor’s Office, Second Supranational Criminal Prosecution Service, Preliminary Inquiry Statement made by Petronilla Viviana Becerra Raimondi. Case file No. 11-2007 of November 12, 2007, pages 921 to 924. Annex 3, Volume IV, of the communication from the petitioners of May 22, 2012.

⁷¹ Annex 17. Preliminary Inquiry Statement made by Federico Díaz Aparicio at the Fifth Supraprovincial Criminal Prosecution Service on December 20, 2005, page. 000667. Annex 3, Volume III, of the communication from the petitioners of May 22, 2012.

⁷² IACHR, Second Report on the Situation of Human Rights in Peru, IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section III. SITUATION AS OF APRIL 5, 1992, paragraph 90, available at: www.cidh.oas.org/countryrep/Peru93sp/iii.htm

⁷³ Database of the Truth and Reconciliation Commission of Peru, List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, page 124 (E#15-1013394), available at: <http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/ListaMuertosyDesaparecidos.pdf>

⁷⁴ Annex 18. Note No. 7-5-M-035 and Note No. 7-5-M-336 from the Permanent Representative of Peru to the OAS from February 8, 1993 and October 14, 1993, respectively.

⁷⁵ Annex 19. Note No. 7-5-M-336 from October 14, 1993. Report No. 223-93-EMG/DIPANDH of September 16, 1993.

that it is obviously impossible for the beneficiary of this plea to continue to be detained in DINCOTE since the year nineteen ninety-two; for the reasons indicated above and because the plea for guarantees is obviously inadmissible, it is hereby declared that the habeas corpus petition [...] is CLEARLY INADMISSIBLE.⁷⁶

96. On March 6, 2002, the brother of the alleged victim filed an appeal challenging the ruling of February 27, 2002, arguing that “it is public knowledge [that] from 1990 to 2001 no one could exercise the present right and, because there are documents indicating that my sister was being pursued as a terrorist although she was not one, the habeas corpus petition is admissible [...]”⁷⁷

97. On March 8, 2002, the 19th Criminal Court of Lima admitted the appeal and forwarded the writ to the superior court.⁷⁸ On March 21, 2002, the First Criminal Chamber of the Superior Court of Justice of Lima ruled that the plea for guarantees was admissible so that a summary investigation could be carried out, and indicated the following:

SECOND: that the incidents that were thus reported merit a summary investigation where it can be effectively established if she is being deprived of her liberty and, if so, to identify the police or judicial authority and the legal status of the case, requiring, to this end, that all suitable means be exhausted to achieve said objective, among which the official letter to the IMPE, gathering police, judicial, and criminal records; [...] ⁷⁹.

98. On May 3, 2002, after receiving the statements and records requested, the 19th Criminal Court of Lima ruled that the habeas corpus petition was groundless, because it was established that there was no record whatsoever that indicated that the alleged victim had been detained by state security agents or that she had been detained in any prison establishment.⁸⁰ Against this ruling, on May 10, 2002, Federico Díaz Aparicio filed a new appeal, and on May 30, 2002, the First Chamber of the Superior Court of Justice upheld the judgment that had declared that the habeas corpus petition was inadmissible and, at the same time, issued instructions to the Public Prosecutor’s Office so that it would proceed to investigate and clarify the complaint in line with its attributions “with respect to clues of perpetration of the crime against humanity, under the category of forced disappearance of persons, to the detriment of Teresa Díaz Aparicio.”⁸¹

99. On September 11, 2002, the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves of the Public Prosecutor’s Office, ordered that investigations be started and various proceedings filed:

Fourth: on the basis of the examination of documents gathered and attached herewith, it was observed that there was a failure to carry out major proceedings to achieve the purposes of the preliminary investigation, in conformity with what is set forth in the second subparagraph of Article 94, THE FOLLOWING IS HEREBY RESOLVED: REPORT knowledge

⁷⁶ Annex 20. Superior Court of Justice of Lima, Tenth Criminal Court of Lima, Resolution No. 1, February 27, 2002, appearing in Annex 6 of the communication from the petitioners of May 22, 2012.

⁷⁷ Annex 21. Appeal challenging the previous ruling, filed by Federico Díaz Aparicio with the 19th Criminal Court of Lima on March 6, 2002, appearing in Annex 6 of the communication from the petitioners of May 22, 2012.

⁷⁸ Annex 22. Nineteenth Criminal Court of Lima, Court Notification Writ No. 06-02 for habeas Corpus LDR, dated March 8, 2002, appearing in Annex 6 of the communication from the petitioners of May 22 2012.

⁷⁹ Annex 23. First Criminal Chamber, Resolution No. 137 –“A” Case file No. 108-02-HC, Lima, March 21, 2002, appearing in Annex 6 of the communication from the petitioners of May 22, 2012.

⁸⁰ Annex 24. Court Resolution from the Nineteenth Criminal Court of Lima, habeas corpus petition No. 006-02 filed March 3, 2002, appearing in Annex 6 of the communication of the petitioners of May 22, 2012.

⁸¹ Annex 25. Resolution 301 “A” issued by the First Chamber of the Superior Court of Justice on May 30, 2002, appearing in Annex 6 of the communication from the petitioners of May 22, 2012.

about the present investigation, as a RESULT.: OPEN UP an investigation at the level of the Office of the Prosecution Service; [...].⁸²

100. On April 7, 2004, the Criminal Investigation Division of the Homicides Department of the National Police Force issued a report on the actions that had been taken,⁸³ indicating and concluding the following:

B. Since Teresa DIAZ APARICIO was detained by the staff of DINCOTE PNP in March 1989, there is no information whatsoever, to date, that would suppose that she was intervened by the police or by personnel of the Armed Forces, nor was it possible to demonstrate that she is now dead, nevertheless because of the way she disappeared and moved away from her family, breaking off all contact with them, it is assumed, in view of her alleged links to the terrorist organization the Shining Path, that she went into hiding to join said insurgency group, and we cannot discard the possibility that she left the country and is now engaged in propaganda activities abroad but under a new identity.

CONCLUSION:

--- For the reasons indicated above, to date it has not been demonstrated that Teresa DIAZ APARICIO has been the victim of an alleged Forced Disappearance, nor has it been established that, in this case, members of the PNP or the Armed Forces are responsible for not having found the evidence proving the above; nevertheless, it cannot be ruled out that the above-mentioned person, in view of her alleged links to the Shining Path Terrorist Organization, is currently in hiding or abroad.⁸⁴

101. On January 10, 2005, the Specialized Prosecution Service ordered additional proceedings, including summoning the next of kin of the alleged victim, persons who were detained with Teresa Díaz Aparicio in 1989, PNP Major Julio Hedilberto Quintana Cruz, who was the Head of the Detainee Monitoring Office in 1992, and teachers who were her co-workers at the UNSM.⁸⁵

102. On October 25, 2007, in response to the request of the Second Supraprovincial Criminal Prosecution Service, the DIRCOTE/PNP, submitted a list of persons detained in the DIRCOTE-PNP and another list of police staff providing services in that institution in the months of July and August 1992. In the response, there is information that some of the pages of the ledgers of detainees were damaged because they were old. Regarding the police staff on active duty during the months being targeted, DIRCOTE/PNP submitted incomplete data indicating that: “in the inactive files of the present Office, there is no account whatsoever of said staff who provided services; it should be pointed out that, in some cases, PNP staff on active duty would only put their initials or their last name and rank [...]”⁸⁶

⁸² Annex 26. Resolution of September 11, 2002 issued by the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves of the Public Prosecutor’s Office, Entry No. 522-02—coming from 15^o FPPL—page 000091, appearing in Annex 3, Volume I of the communication from the petitioners of May 22, 2012.

⁸³ Annex 27. The Criminal Investigation Division of the Homicides Department of the National Police Force. Report No. 276-04-DIRINCRI-PNP/DIVNHOM.DEPINHOM.GOP of April 7, 2004, Volume III, pages 276 to 278. Annex 3, Volume II, of the communication from the petitioners of May 22, 2012.

⁸⁴ Annex 27. Criminal Investigation Department of the Homicides Division of the National Police Force. Report No. 276-04-DIRINCRI-PNP/DIVNHOM.DEPINHOM.GOP of April 7, 2004, Volume III, pages 276 to 278. Annex 3, Volume II, of the communication from the petitioners of May 22, 2012.

⁸⁵ Annex 28. Resolution issued by the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves, January 10, 2005. Annex 3, Volume III, page 561, of the communication from the petitioners of May 22, 2012.

⁸⁶ Annex 29. National Police Force of Peru, Counter-Terrorism Department and Detainee Monitoring Office. Report No. 16-07-2007 DIRCOTE/PNP-OFICODET, page 1196, November 12, 2007. Annex 3, Volume IV, of the communication from the petitioners of May 22, 2012.

103. On February 13, 2009, the Second Supraprovincial Criminal Prosecution Service ruled that “THERE ARE NO GROUNDS FOR FILING A CRIMINAL COMPLAINT against THOSE WHO MIGHT BE RESPONSIBLE for the alleged crime against Humanity—Forced Disappearance—to the detriment of Teresa Díaz Aparicio,” and ordered that the files be provisionally archived. The following considerations were highlighted:

TWELFTH: (...) the list in the account of persons detained in the months of July and August 1992 in DIRCOTE PNP in the case file does not include the name of Teresa Díaz Aparicio, also (...) the DIRCOTE Registry of Detainees does not record the person of Teresa Díaz Aparicio. As for the account of the police staff who provided services in the DIRCOTE Detainee Monitoring Office in July and August 1992, there is a list on page 1206, which includes certain names of the police personnel that were duly identified as indicated in Report No. 16-07-2007-DIRCOTE/PNP-OFICODET on page 1196.

SIXTEENTH: (...) it is indicated that the person of Teresa Díaz Aparicio has been missing since July 1992, which has been confirmed not only by statements made by her next of kin Federico Díaz Aparicio and Petronila Viviana Becerra Raimondi, but also by her absence from work, which was the reason for unjustifiably stopping her teaching activities in the School of Social Work of UNMSM, where she had only picked up her earnings up to July 1992, in addition to which there is no record of any migration movement from 1985 to the present. That said disappearance is forced, because there are clues that, in said action, DIRCOTE personnel might have participated, because there had been a detention of Teresa Díaz Aparicio in March 1989, in which, on the basis of Report No. 888-D3-SDIRCOTE, DIRCOTE identified Teresa Díaz Aparicio Díaz as a member of the support system for the Communist Party of Peru—Shining Path, in charge of providing housing, food, medical assistance, and other needs of the insurgent-terrorist group, which was dismissed by the investigation itself carried out at that time, so that the Forty-First Provincial Prosecution Service of Lima ordered her release, and although no criminal proceedings or criminal investigation for the crime of terrorism were pending, police troops of DIRCOTE had broken into and searched her home in August 1989 because they had linked her to the terrorist organization the Shining Path, regarding which the above-mentioned wronged person filed a habeas corpus petition complaining to the authorities that police troops of DIRCOTE had entered her home on August 10, 1989, ordering that she appear the following day at the offices of DIRCOTE, although there was no pending investigation against her, on the basis of which her liberty was already being threatened, and because these incidents are common practice in the Police, according to the report issued by the Truth and Reconciliation Commission, these incidents would tend to establish a crime; nevertheless, it has been impossible to identify the alleged persons responsible, because of which the case was provisionally archived, and it had to be investigated at the police level by the Police Division of the Public Prosecutor’s Office so that they could report any progress being made in the case.⁸⁷

104. On August 8, 2012, the Second Supraprovincial Criminal Prosecution Service requested the National Criminal Chamber and the Special Criminal Chamber—keeping the identity of the declarants confidential to ensure their safety—information about the persons identified using code names subject to the Effective Collaboration Law or who had been subjected to proceedings of premature findings proceedings filed with the courts for the crime of forced disappearance in the year 1992, because they could yield relevant information or new elements that could reorient the investigation on the disappearance of Teresa Díaz Aparicio. It was also requested that steps be taken to receive inquest statements from these persons and, if their appearance was not possible, then they should provide the reason for it.⁸⁸

⁸⁷ Annex 30. Resolution issued by the Second Supraprovincial Prosecution Service, case file 11-2007, February 13, 2009, appearing in the communication from the petitioners of July 27, 2011.

⁸⁸ Annex 31. Resolution issued by the Second Supraprovincial Prosecution Service, case file 11-2007, August 8, 2012, appearing in the communication from the state No. 7-5-M/514 of November 7, 2012.

105. In a letter of April 24, 2013, sent by the Department for the Protection of Basic Rights for Governance to the Ministry of Justice, the following was highlighted:

[...]

13. Taking into account that the disappearance of Ms. Teresa Díaz Aparicio occurred in a context where the practice of forced disappearance was used as a mechanism to eliminate members of, or persons suspected of belonging to, insurgent organizations, as pointed out by the Truth and Reconciliation Commission and confirmed by the Judicial Branch of Government, when trying and punishing the members of the so-called “Grupo Colina,” we take the liberty of suggesting to the Supranational Specialized Public Prosecutor’s Office to consult the Judicial Branch of Government to see if they have any information appearing in the case files related to the above-mentioned criminal group that would make it possible to link the disappearance of Teresa Díaz to its activities.

14. Regarding this, the Truth and Reconciliation Commission has contended that “a common pattern of the modus operandi used by troops of the Peruvian Army comprising the Destacamento Colina (was that) the victims were identified and selected for their political activities—among whom students, teachers, trade union leaders, journalists—and because some of them had been detained previously charged with terrorism because of alleged ties to the Shining Path and the Túpac Amaru Revolutionary Movement.”⁸⁹

106. The Commission does not have any additional information about the steps relative to the investigation of what had happened to Teresa Díaz Aparicio.

3. Santiago Antezana Cueto (case 12.224)

107. According to the description of the initial petition, Santiago Antezana Cueto, born on May 20, 1946, lived in the city of Lima with his partner Rosa Carcausto Paco. On May 7, 1984, he travelled to the village of Manyacc, district of Anta, province of Acobamba, department of Huancavelica, to attend his father’s funeral services.⁹⁰ That same day, he was detained by troops of the Peruvian Army and taken, along with his uncle Máximo Antezana Espeza to the Army Garrison of the Military Base of Acobamba.⁹¹ The last time he was seen alive was May 15th of that year, the day on which Máximo Antezana Espeza was released.⁹²

108. Documents of the Public Prosecutor’s Office indicate that, on May 7, 1984, Santiago Antezana Cueto found out that his uncle Máximo Antezana Espeza was being held by community members of the Self-Defense Committee of the Village of Manyacc, and because of this he went out to defend his uncle and the community watchmen (*ronderos*) proceeded to detain him as well, and then delivered both of them to members of the Peruvian Army at the military base of the province of Acobamba.⁹³

109. Likewise, Ofelia Antezana Cueto stated that she saw when her father Máximo Antezana Espeza and Santiago Antezana Cueto were detained by the community members and then proceeded to hand them over to the patrolmen of the military base of Acobamba. She also indicated that her father had been

⁸⁹ Annex 32. Ministry of the Interior. Department for the Protection of the Basic Rights for Governance. Official letter No. 000390-2013/DGSD/DPDFG of April 24, 2013, appearing in the communication from the State. Note No. 7-5-M/213 of June 26, 2013.

⁹⁰ Annex 33. Initial petition received on November 12, 1998.

⁹¹ Annex 33. Initial petition received on November 12, 1998.

⁹² Annex 34. Communication from the petitioners of July 4, 2011.

⁹³ Annex. Document formalizing the criminal proceedings of July 31, 2009 by the Supraprovincial provincial Criminal Prosecution Service of the Judicial District of Huancavelica. Annex to the communication from the state. Note No. 7-5-M/360 of October 29, 2013.

released eight days later, after having been severely tortured and threatened with death if he did not leave the village.⁹⁴

110. On March 19, 1985 Ermilio Antezana Cueto and Rosa Carcausto Paco, brother and partner of Santiago Antezana, respectively, filed a complaint with the Prosecution Service of the Nation, requesting an investigation of the incidents to safeguard the personal integrity of Santiago Antezana Cueto and the other detainees, and to identify and punish those responsible. They also requested that measures, required to protect their personal integrity, be ordered. In their complaint they pointed out that:

- 1) On July 31, 1984, Dr. José Burneo Labrín, of the Legal Counsel Department of the Episcopal Commission for Social Action, by means of a communication sent to the Third Complaints and Reports Department, publicly disclosed the Memorandum Letter sent by our relatives and fellow members of the Peasant Community of Manyacc (village of the District of Anta, province of Acobamba, department of Huancavelica), reporting the detention and virtual disappearance of many persons, among whom there was SANTIAGO ANTEZANA CUETO, brother and partner, respectively, of the complainants.⁹⁵
- 2) On September 13, 1984, Ofelia Antezana Torre and others brought to attention the reports received from our relatives and fellow community members [...] It was indicated that SANTIAGO ANTEZANA CUETO continued to be a detainee-missing person, along with Demetrio Chávez Aguilar, Juan Ignacio Velásquez Araujo, and Emiliano Antezana Espeza.
- 3) [...]
- 4) The parents and other next of kin of Santiago Antezana Cueto were in the province of Acobamba; when he was informed of the death of his father, Abraham Antezana Espeza, he decided to travel there. He left Lima in April 1984 [...]. In Manyacc he stayed at the house of his uncle Máximo Antezana Espeza, the brother of his deceased father.
- 5) As indicated in the previous complaints, Manyacc was undergoing a situation of uncertainty as a result of the violence from the insurgents and the counterinsurgency forces. Members of the Armed Forces, along with a group of peasants who were acting as “paramilitaries” perpetrated a series of abuses and atrocities allegedly to combat terrorism. [...] From the accounts of persons held as detainees-missing persons, Máximo Antezana Espeza was released from the Garrison of Acobamba, after having been severely tortured and threatened with death if he did not leave the village and if he reported what had occurred there.
- 6) Santiago Antezana Cueto was detained when he tried to defend his uncle Máximo Antezana Espeza from the paramilitaries, and both were detained by the latter and handed over to the Army. They were then taken, along with others, by military personnel to the Military Garrison of Acobamba. At this garrison, their next of kin were denied any information about them; on the contrary they were threatened with: “the same will happen to you if you keep on

⁹⁴ Annex 35. Communication from the petitioners of April 28, 2000. Complaint addressed to the Attorney General of the Nation, received on September 13, 1984, filed by Ofelia Antezana Torre and Ermilio Antezana Cueto, the cousin and brother of Santiago Antezana Cueto.

⁹⁵ Annex 36. Complaint filed with the Office of the Attorney General of the Nation on March 19, 1985. Annex to initial petition. There is a transcription of the memorial-letter as follows:

“We the Community are suffering from a calamity, please help us all who live in Lima, we are dying of hunger and cold, we have nothing to eat, we are in the mountains eating earth and our houses have been burned and our animals were eaten by the soldiers (Army) and the whole Community we are accused of terrorism, men and women, and today 6 persons have disappeared Demetrio Chávez, Santiago Antezana, Juan Velásquez. Máximo Antezana, Emiliano Antezana, those are the ones who disappeared and many were detained, the soldiers abused them and we went to ask about them and they said they are in Acobamba, the army came into the village of Manyacc on May 12 of the present year...”(sic)

insisting.” Apart from the witness account provided by Máximo Antezana Espeza, who was held with the victim, today no one knows if he is dead or alive [...].⁹⁶

111. On the basis of a communication dated May 31, 1985, Ofelia Antezana Torre requested the Attorney-General of the Nation information about case file 1189-84 regarding the complaints filed for the detention and subsequent disappearance of Santiago Antezana Cueto, Emiliano Antezana Espeza, Juan Ignacio Velásquez Araujo, and Demetrio Chávez Aguilar. They had reported that the case file had been forwarded to the Superior Senior Prosecutor of Huancavelica on November 6, 1984.⁹⁷

112. On May 27, 1992, Ms. Rosa Carcausto Paco went to the Special Prosecution Service of the Human Rights Ombudsperson’s Office of the Public Prosecutor’s Office, in order to inquire about the complaint filed regarding the disappearance of her husband. She added to her complaint by pointing out that “when she went to inquire about the missing person one month after his detention, at the military garrison, they denied he had been detained at that place, but that at first he had been detained but that they should no longer insist because he had been transferred to Ayacucho. She added that, since that date, she has no information about the whereabouts of her husband, so that she appeared at this Prosecution Service to be informed about the results of the investigations that had been conducted.”⁹⁸ On August 14, 1992, there was information that the Provincial Prosecutor of Acobamba had reported to the Special Crime Prevention Prosecutor, Human Rights Ombudsperson, that “there is no report regarding this... because there are no files going back to that time as they had been burned during the insurgency attack that took place in 1989.” In the official letter of August 17, 1992, said Prosecutor ordered the Provincial Prosecutor of Acobamba to start a new investigation into the alleged disappearance of Santiago Antezana Cueto because “it is assumed that the original complaint was in that Head Office.”⁹⁹

113. On June 25, 2001, Ms. Rosa Carcausto Paco submitted a communication to the Office of the Attorney General of the Nation, whereby she ratified her complaint regarding the detention and disappearance of Santiago Antezana Cueto.¹⁰⁰ Likewise, on November 25, 2004, Ms. Carcausto Paco, with the representative of the Human Rights Commission (Comisión de Derechos Humanos—COMISEDH), filed criminal proceedings with the Provincial Joint Prosecution Service of Acobamba against the Peruvian Army Captain nicknamed the “Scorpion” who belonged to the Military Garrison of Acobamba, and others responsible for the disappearance of Santiago Antezana Cueto.¹⁰¹ In her complaint, she pointed out that:

When Cristina Araujo Raymundo was looking for her son in the garrison of Acobamba, she noticed that inside there were Santiago Antezana and his uncles Máximo and Emiliano Antezana, digging the ground.

114. On the basis of a communication dated July 31, 2009, the Supraprovincial Criminal Provincial Prosecutor of Huancavelica formally filed criminal proceedings against Captain José Antonio Esquivel Mora, as the perpetrator of the crime against humanity, under the category of forced disappearance, by a government official to the detriment of Santiago Antezana Cueto.¹⁰² On April 28, 2010, the

⁹⁶ Annex 37. Complaint filed with the Office of the Attorney General of the Nation on March 19, 1985. Annex to initial petition.

⁹⁷ Annex 38. Document of May 31, 1985 addressed to the Attorney General of the Nation. Annex to the communication from the petitioners of January 19, 2005.

⁹⁸ Annex 39. Additions to the complaint filed on May 27, 1992 by Ms. Rosa Carcausto Paco with the Special Prosecution Service of the Office of the Human Rights Ombudsperson of the Public Prosecutor’s Office. Annex to initial petition

⁹⁹ Annex 40. Official letters from the Provincial Prosecution Service of Acobamba of August 14, 1992 and from the Special Prosecution Service for Crime Prevention, Office of the Human Rights Ombudsperson of August 17, 1992. Annex to the communication from the petitioners of April 28, 2000.

¹⁰⁰ Annex 41. Ratification of the complaint filed by Ms. Rosa Carcausto Paco with the Office of the Attorney General of the Nation on June 25, 2001. Annex to the communication from the petitioners of January 19, 2005.

¹⁰¹ Annex 42. Complaint filed with the Provincial Joint Prosecution Service of Acobamba by Ms. Carcausto Paco on November 25, 2004. Annex to the communication from the petitioners of January 19, 2005.

¹⁰² Annex 43. Document of March 22, 2010 submitted by the Supraprovincial Provincial Criminal Prosecution Service of Huancavelica with the Criminal Court of Huancavelica. Annex to the communication from the petitioners of July 4, 2011.

corresponding criminal proceedings were filed¹⁰³ and, in the writ dated April 8, 2011, the Third Supraprovincial Criminal Court of Lima issued an order barring José Antonio Esquivel Mora from leaving the country.¹⁰⁴

115. In April 2012, the state reported that, on November 21, 2011, the National Criminal Chamber upheld the ruling that was appealed on February 17, 2011 issued by the Third Supraprovincial Criminal Provincial Court of Lima, and stated that the challenges filed based on the “underlying nature of the crime” and statute of limitations claimed by the accused were groundless.¹⁰⁵

116. On July 9, 2013, the criminal proceedings against José Antonio Esquivel Mora for the crime against humanity, under the category of forced disappearance, to the detriment of Santiago Antezana Cueto were in the oral trial stage, concretely in the stage of taking statements from witnesses and experts.¹⁰⁶ The Commission noted that the name of Santiago Antezana Cueto was registered in the List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000.¹⁰⁷

117. As for the allegations of torture, the Commission stressed that, on September 24, 1986, Máximo Antezana Espeza requested the Director of the Human Rights Office of the Public Prosecutor’s Office to provide for him and his family “safeguards so that they could live peacefully in La Merced and inform me if there is any regular proceedings filed against me that would justify monitoring by the police, otherwise it would involve arbitrary monitoring to prevent me from continuing to file complaints against civilians and military personnel who had detained, made to disappear, and killed persons from my village of Manyacc, District of Anta, Province of Acobamba, Huancavelica.”¹⁰⁸ Among the considerations set forth in his request, Mr. Máximo Antezana pointed out that:

In Manyacc, I was detained by civilians who were associated with Forces of Law and Order and handed over to them. I stayed in the Army Garrison of Acobamba for several days along with my brother Emiliano Antezana Espeza and my nephew Santiago Antezana Cueto. There, we were tortured and when we were released we were instructed not to speak and to leave the village otherwise I “would be made to disappear.”¹⁰⁹

118. The Commission noted that, in her ratification of the complaint filed with the Office of the Attorney General of the Nation, on June 20, 2001, Rosa Carcausto Paco pointed out the following:

Santiago Antezana stayed in that garrison for a week, where he was subjected to various types of torture, a fact that was reported to me by his uncle Máximo Antezana after he had been released.¹¹⁰

¹⁰³ Annex 44. Bill of indictment issued by the Third Supraprovincial Provincial Criminal Court of Lima on April 28, 2010. Annex to the communication from the state. Note No. 7-5-M/174 of April 24, 2012.

¹⁰⁴ Annex 45. Resolution issued by the Third Supraprovincial Court of Lima of the National Criminal Chamber on April 8, 2011. Annex to the communication from the petitioners of July 4, 2011.

¹⁰⁵ Annex 46. Communication from the state. Note No. 7-5-M/174 of April 24, 2012.

¹⁰⁶ Annex 47. Report from the state No. 194-2013-JUS/PPES of July 9, 2013.

¹⁰⁷ Final Report of the Truth and Reconciliation Commission. List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, page 365, E#09-1000520, available at:

<http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSanexo4/ListamuertosyDesaparecidos.pdf>

¹⁰⁸ Annex 48. Petition for guarantees filed by Mr. Máximo Antezana Espeza with the Director of the Human Rights Office of the Public Prosecutor’s Office on September 24, 1986. Annex to the communication from the petitioners of January 19, 2005.

¹⁰⁹ Annex 48. Petition for guarantees filed by Mr. Máximo Antezana Espeza with the Director of the Human Rights Office of the Public Prosecutor’s Office on September 24, 1986. Annex to the communication from the petitioners of January 19, 2005.

¹¹⁰ Annex 41. Ratification of the complaint filed by Ms. Rosa Carcausto Paco with the Office of the Attorney General of the Nation on June 25, 2001. Annex to the communication from the petitioners of January 19, 2005.

119. It was also noted that, in her statement made on May 25, 2002 in a public hearing with the Truth and Reconciliation Commission, Ms. Cristina Araujo Raymundo stated the following:

Then I went into the garrison and when I entered the garrison, there they were Santiago Antesana, Emiliano Antesana, and Máximo Antesana as if serving a sentence with pick and shovel over their shoulder. They were digging.¹¹¹

120. In that regard, in the complaint filed by Ms. Carcausto with the Provincial Criminal Prosecution Service of Acobamba on November 25, 2004, she indicated the following:

On May 14, 1984, her uncle Máximo Antezana was released [...] when he met me he confirmed that my partner Santiago Antezana was still alive, although on various occasions he had been tortured and forced to dig the ground to make graves and bury other detainees; he also said he would often ask in fear: when will it be my turn? He was referring to when he would be executed without a trial.¹¹²

121. And, in a statement made at the Provincial Joint Prosecution Service of Acobamba, Ms. Rosa Carcausto indicated that:

[...] Don Máximo Antezana informed me that Santiago and the other detainees had been tortured [...] they made them dig the ground, telling them that those graves were for them and then they brought other unknown persons and they made them and my partner and his uncle Máximo and other relatives bury them and were cruelly tortured.¹¹³

4. Néstor Rojas Medina (case 12.225)

122. According to the account of the petitioners, Néstor Rojas Medina, son of Marcelina Medina Negrón and Leopoldo Rojas Manuyama, was 20 years old, a student majoring in radio broadcasting, and a trainee in a radio broadcasting station Radiodifusión RBC in Lima.¹¹⁴ He was brought up by his mother and by Abelardo Collantes Quiroz, his mother's partner. Abelardo Collantes and Marcelina Negrón had a daughter together, Tania Collantes Medina. January 26, 1991 was the last time that the family had heard from Néstor Rojas Medina.¹¹⁵

123. According to the narrative of the petitioners, Néstor Rojas Medina was detained by the National Police Force with the military base in the city of Tocache, department of San Martín, as a result of a round-up operation when he went back home for some of his belongings.¹¹⁶

124. The statement made by Consuelo Leijas Landa, President of the Retailers Association, indicated the following:

Néstor Rojas Medina and Miguel Campos, when they were walking along Comercio street at about the tenth block, were stopped by police officers belonging to the PNP, according to

¹¹¹ Annex 49. Statement made by Ms. Cristina Araujo Raymundo with the CVR of May 25, 2002. Annex to the communication from the petitioners of July 4, 2011.

¹¹² Annex 42. Complaint filed with the Provincial Joint Prosecution Service of Acobamba by Ms. Carcausto Paco on November 25, 2004. Annex to the communication from the petitioners of January 19, 2005.

¹¹³ Annex 50. Statement made by Ms. Rosa Carcausto Paco at the Provincial Joint Prosecution Service of Acobamba on February 17, 2005. Annex to the communication from the state. Note No. 7-5-M/174 Of April 24, 2011.

¹¹⁴ Annex 51. Communication from the petitioners of September 23, 2011.

¹¹⁵ Annex 51. Communication from the petitioners of September 23, 2011. The petitioners reported that the records where the victim's birth was registered were destroyed, which has prevented her mother from filing court proceedings for a certificate of absence.

¹¹⁶ Annex 51. Communication from the petitioners of September 23, 2011.

versions of persons who were walking in that area at the time. When several friends appeared before the local police station and the Peruvian Army Base to inquire about the situation and whereabouts of the detainees, they were turned away with indications that there were no detainees there bearing those names (...).¹¹⁷

125. The petitioners reported that the background to the detention was a raid by the Shining Path on November 9, 1990 in the village of Juan Santos Atahualpa de Tocache, where they set fire to the house of the mother of Néstor Rojas Medina, killing the school principal, who was his cousin. At that same time, about 100 families from the locality were forced to abandon their land and flee because of terrorist violence. Because of food, shelter, schooling, and health needs, Néstor decided to go back to Tocache to get back what he had lost and to withdraw some of his mother's bank savings.¹¹⁸

126. According to the petitioners, on March 8, 1991, the mother of Néstor Rojas Medina filed a complaint for his disappearance with the Office of the Attorney General of the Nation. In June 1992, the Prosecution Service of the Office of the Human Rights Ombudsperson reported to the next of kin that the person responsible had been identified and that he was allegedly the Chief of Command of the General Police of Tocache.¹¹⁹ Nevertheless, the petitioners indicated that, because of the application of the Amnesty Law of June 15, 1995, it was not possible to file proceedings against this person. The state did not challenge this information.

127. On September 16, 2004, Ms. Marcelina Medina Negrón filed with the Provincial Prosecution Service Specializing in Forced Disappearances a criminal complaint against the Commander also known as "Tito," Chief of Command of the General Police of Tocache, for the crimes of kidnapping and forced disappearance of Néstor Rojas Medina.¹²⁰

128. On August 22, 2005, the next of kin of Néstor Rojas Medina requested the Office of the Human Rights Ombudsperson a certificate of absence as a result of forced disappearance in the framework of Law 28413 (law governing absence because of forced disappearance during the period 1980-2000).¹²¹

129. The Office of the Human Rights Ombudsperson issued Verification Report No. 6790-20006-OD/Lima on September 6, 2006 where it observed, as part of the background to the case, that "the disappearance of Néstor Rojas Medina is registered in the Consolidated List of the Database of the Truth and Reconciliation Commission included in the Publication "Peruvians who are missing: Preliminary List of Persons Missing because of Violence (1980-2000), with registration No. 6790".¹²²

130. In its report, the Office of the Human Rights Ombudsperson referred to information appearing in the archives of documents of the Public Prosecutor's Office:

- a) Complaint filed by Marcelina Medina Negrón on March 8, 1991 with the Office of the Attorney General of the Nation.
- b) Official Letter No. 645-DL-S, of March 21, 1991, from the Secretariat of the Senate to the Office of the Attorney General of the Nation, informing that, on February 14, 1991, Senator Hurtado Pozo contacted the Chief of Command of the General Police of Tocache, who

¹¹⁷ Annex 52. Complaint filed by Ms. Consuela Sejas Landa with the Prosecution Service of the province of Tocache. Communication from the petitioners of September 23, 2011.

¹¹⁸ Annex 51. Communication from the petitioners of September 23, 2011.

¹¹⁹ Annex 51. Communication from the petitioners of September 23, 2011.

¹²⁰ Annex 53. Communication from the state of December 7, 2004.

¹²¹ Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

¹²² Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

identified himself as Commander “Tito” and confirmed that Néstor Rojas Medina had been transferred to the Armed Forces.

c) Official Letter No. 074/B-2 of May 21, 1991, from the Commander General of the Huallaga Front to the Special Prosecution Service of the Office of the Human Rights Ombudsperson of Lima, reporting that Néstor Rojas Medina was not handed over to any Counterinsurgency Base of the Huallaga Front.¹²³

131. The Office of the Human Rights Ombudsperson took into consideration the testimony of Ms. Marcelina Medina Negro, mother of Néstor Rojas Medina; as well as that of his aunts, Faustina Collantes Quiróz and Luzmilla Collantes Quiróz, incorporated into the database of the Truth and Reconciliation Commission. The Ombudsperson’s Office later interviewed these persons, who confirmed their testimonies.¹²⁴

a) Marcelina Medina Negrón (mother)

[...] she ratified her testimony as given to the Truth and Reconciliation Committee and added that her son was detained with Wilmer Vargas Collantes, who when attempting to defend him was tortured. Afterwards, the victim was taken to the Police Station of Tocache where he stayed eight days and afterwards was transferred to the Military Base of Tocache.

She pointed out that Luzmilla and Faustina Collantes Quiroz (sisters in law of the declarant) said that, on the day her son was detained, he was carrying \$2,000 (two thousand dollars) as a result of the payment that the former of the above-mentioned persons had made for the sale of pigs. Finally, the declarant indicated that, because of her insistence, the military personnel allowed her to enter the Military Base of Tocache, where she only saw two detainees, but not her son, Néstor Rojas Medina.

b) Faustina Collantes Quiroz (aunt)

[...] she indicated that she learned about the victim’s detention in February 1991, from Maruja Ávila Pino. She appeared at the Military Base of Tocache, where she interviewed a military person (unidentified) who told her that the victim was detained at the military base but that he had subsequently been released. She believed the reply and, because of that, she did not look for him.

c) Luzmilla Collantes Quiroz (aunt)

[...] she pointed out that Néstor was detained on January 26, 1991, by members of the National Police Force, and that she learned about what had happened a month later from Maruja Ávila Pino, who remarked that military troops of the Military Base of Tocache were looking for her to inform her that her nephew had been detained and that her presence was needed so that she could help him.

When the declarant went to the military base, they told her that the victim had been detained for only five days and they did not know his whereabouts. In view of this, the declarant went to the Police where they refused to give her any information.

¹²³ Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

¹²⁴ Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

132. In its review of the case, regarding the circumstances of the disappearance and its connection to Law No. 28413 regarding absence because of forced disappearance, the Office of the Human Rights Ombudsperson pointed out:

According to information gathered by the Office of the Human Rights Ombudsperson, on January 26, 1991, there was a group of police officers who were engaged in a raid; they detained Néstor Rojas Medina when he was walking in the vicinity of the Aviación avenue, in the district and province of Tocache, in the department of San Martín. The policemen took the victim to the Police Station of Tocache and, after a few days, he was transferred to the Military Base of Tocache. Since that day his whereabouts are unknown.

As a result, the disappearance of Néstor Rojas Medina fits within the assumptions envisaged in subparagraph a) of Article 3 of Law 28413, which indicates that absence because of forced disappearance occurs *“when the person had disappeared or was made to disappear in circumstances where he/she was arrested, detained, or transferred against his/her will or any other form of deprivation of liberty.”*¹²⁵

133. The Commission noted that the Office of the Human Rights Ombudsperson concluded “that there are elements that make it possible to reasonably presume that Néstor Rojas Medina has been absent since January 26, 1991 because of forced disappearance as a consequence of the violence taking place during the years 1980 to 2000.”¹²⁶ The Commission noted that the name of Néstor Rojas Medina is registered in the List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, indicating that the disappearance was also documented by COMISEDH, the National Human Rights Coordination, and the Office of the Human Rights Ombudsperson.¹²⁷

134. Regarding the investigations, the petitioners indicated that they had filed two complaints.¹²⁸

135. On the one hand, there was the complaint filed with the Provincial Prosecution Service of Tocache on February 5, 1991, regarding which they described the following sequence of events:

- On February 14, 1991, the Chief of Command of the Police of Tocache, also known as “Tito,” informed Senator Jorge Hurtado Pozo that policemen had detained Néstor Rojas Medina and that afterwards he had been transferred to the armed forces.
- On September 22, 1991, his mother made a statement.
- On April 25, 2000, the Prosecution Office ruled to refer the investigation to the Police so that they would proceed to taking steps to locate Néstor Rojas Medina
- On July 11 (no year is indicated), the Prosecution Service issued a ruling, indicating that they did not know for certain who had detained the victim, as a result of which they ordered the case file documents to be provisionally archived and ordered the Tocache Police Station to continue its investigations.

¹²⁵ Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

¹²⁶ Annex 54. Verification Report No. 6790-20006-OD/Lima of September 6, 2006. Communication from the petitioners of May 25, 2007.

¹²⁷ Final Report of the CVR. List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, page 365, E#22-1011161, available at:

<http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSanexo4/ListaMuertosyDesaparecidos.pdf>

¹²⁸ Annex 51. Communication from the petitioners of September 23, 2011.

136. On the other hand, there was the complaint filed on September 16, 2004 by the mother of Néstor Rojas Medina with the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves, for the crimes of kidnapping and forced disappearance to the detriment of her son. They described that this complaint led to the proceedings of September 23 of that same year, that official letters were sent to various authorities, and that, in April 2005, statements were taken in a preliminary examination.

137. The state did not challenge this information about the complaints referred to. The description of the internal investigations conducted by the state starts in 2011, on the basis of which the Commission understands that, between 2005 and 2011, no steps had been taken with respect to this investigation.

138. Specifically, the state indicated that “investigations have been conducted for the Crime against Humanity, under the category of Forced Disappearance, perpetrated by a government official.”¹²⁹ By means of Order Number One of March 28, 2011, issued by the First Provincial Corporate Criminal Prosecution Office of Moyobamba, the following was ordered:

- a) Adjust the case of Mr. Néstor Rojas in line with the New Criminal Proceedings Code;
- b) Start the preliminary investigation at the headquarters of the prosecution against THOSE FOUND TO BE RESPONSIBLE as the alleged perpetrators of the crime against humanity, under the category of forced disappearance, to the detriment of Néstor Rojas, under the direction of the Public Prosecutor’s Office with a maximum deadline of 120 days to better clarify the facts;
- c) Extend taking statements from various persons;
- d) Forward various official letters to the Ministry of Defense and the Ministry of the Interior so that they could provide information about the names of the chiefs in charge of the Police Station of Tocache from January to December 1991; to the Counter-Terrorism Department of the National Police Force of Peru so that it would forward a report on prior records of the crime of terrorism and/or treason to the homeland that Néstor Rojas might have had; an official letter to the National Convictions Office so that it would send a report on the possible convictions and crimes that might be registered for Néstor; official letter to the Executive Office of the Penitentiary Records so that it would send a report on Nestor’s entries and exits in penitentiary centers; official letter to the General Department of Migration and Naturalization so that it would send a report on his entry into and exit from the country; and to the National Electoral Office to send a report of whether or not Néstor Rojas exercised his right to vote in the elections of 1996, 2001, and 2006.¹³⁰

139. The state asserted that, through the Public Prosecutor’s Office, it has ordered a series of steps and procedures aimed at clarifying the facts, the whereabouts of the victim, and the identification and punishment of those responsible.¹³¹

140. By means of provision No. 03-2012-1°FPPL of January 18, 2013, the First Provincial Corporate Criminal Prosecution Service of Tocache declared that it was not appropriate to formalize or continue the preparatory investigation for the crime against humanity under the category of forced disappearance perpetrated by members of the National Police Force, in the identification stage, to the detriment of Néstor Rojas Medina. That decision was based on the following:

¹²⁹ Annex 55. Communication from the state. Note No. 7-5-M/244 of April 25, 2011.

¹³⁰ Annex 56. Order Number One of March 28, 2011, issued by the First Corporate Provincial Criminal Prosecution Service of Moyobamba. Communication from the state. Note No. 7-5-M/244 of April 25, 2011.

¹³¹ Annex 55. Communication from the state. Note No. 7-5-M/244 of April 25, 2011.

(...) on the base of the documents of the proceedings, it can be determined that, despite efforts made in the preliminary steps of the present case, aimed at identifying, locating, and capturing the alleged perpetrators, to date no positive result has been obtained [...] therefore it is not appropriate to formalize or continue the preparatory investigation and the present investigation should be archived.

[...]

(...) From the concrete case it can be deduced, in principle, that in terms of the time-limits for the investigation being referred to, it was extended for 120 calendar days so as to achieve the goal of said identification, although the perpetrators of the incident were not identified and that this presumption is sine qua non (sic) to be able to proceed with the investigation, otherwise, the prosecutor has no other option but to archive the case.¹³²

141. In the ruling of the First Provincial Corporate Criminal Prosecution Office of Tocache, in its third considering clause on Reasons in Fact, it was pointed out:

That, although it is certain that, from observing the proceedings comprising the criminal case to date, it can be concluded that the crime has been accredited on the basis of the statement made by the complainant Consuelo Seijas Landa and other evidence, [...] at that time, the area of Huallaga, specifically the province of Tocache, was in a state of exception (emergency status), protected by the Political Constitution of the State, incidents that would occur with the limitation on the rights of citizens, and as a result police agents would act without any personal identification [...] thus breaching the basic rights of all persons; that the alleged perpetrators members of the National Police acted in unprecedented and macabre ways...; that when investigating the facts, the government itself that ruled at that time [...] was the obstacle to clarifying the facts.¹³³

142. In its communication of March 20, 2014, the state stressed that, in the same ruling, it decided to instruct “[...] the Police Station of the PNP having jurisdiction to continue the investigation and to identify those allegedly responsible for the crime.”¹³⁴

143. Likewise, the state indicated that, in accordance with Article 12 of the Basic Law of the Public Prosecutor’s Office, the petitioners had the possibility of filing with the Superior Prosecution Service an appeal complaining about or challenging the decision to provisionally archive the case.”¹³⁵

5. Cory Clodolia Tenicela Tello (case 12.823)

144. According to the account of the petitioners, Cory Clodolia Tenicela Tello, 32 years old, was a student at the National University of the Center of Peru and sold beauty care products.¹³⁶ She left home at 17:00 on October 2, 1992 to collect payments in the center of Huancayo, Department of Junín, and never came back.¹³⁷ According to the description of the petitioners, her next of kin are: her mother, Amadea Tello

¹³² Annex 57. Order No. 03-2012-1°FPPL of January 18, 2013, of the First Corporate Provincial Criminal Prosecution Service of Tocache. Annex. Communication from the state. Note No. 7-5-M/082, March 20, 2014.

¹³³ Annex 57. Order No. 03-2012-1°FPPL of January 18, 2013, of the First Corporate Provincial Criminal Prosecution Service of Tocache. Annex. Communication from the state. Note No. 7-5-M/082, March 20, 2014.

¹³⁴ Annex 58. Communication from the state. Note No. 7-5-M/082, March 20, 2014

¹³⁵ Annex 57. Communication from the state. Note No. 7-5-M/082, March 20, 2014. Quoting I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Merits. Judgment of January 20, 1989. Series C No. 5, para. 188; I/A Court H.R., *Caballero-Delgado and Santana Case v. Colombia*. Merits. Judgment of December 8, 1995, Series C No. 22, para. 58.

¹³⁶ Annex 59. Initial petition received on June 10, 2003.

¹³⁷ Annex 59. Initial petition received on June 10, 2003.

Barrera; her sister, Norma Juana Tenicela Tello; her brother, Washington Tenicela Tello; and her niece, Yorika Jara Tenicela.¹³⁸

145. On October 14, 1992, her mother, Amadea Tello Barrera, filed a complaint for the disappearance of Cory Clodolia Tenicela Tello with the Provincial Prosecution Service of Junín¹³⁹ and on October 26, 1992, she filed a habeas corpus petition with the Criminal Rota Court for the detention of Cory Clodolia Tenicela Tello by the forces of law and order in Huancayo-Junín and transfer to the Criminal Investigation Department for not carrying her identity papers.¹⁴⁰ In the same proceedings, Ms. Tello Barrera reported that, on October 22, her home was entered into and searched and that “the police lieutenant made me understand that my above-mentioned daughter was involved in an ordinary offense and that she was detained in this city’s technical police station,” as a result of which she requested the investigating judge to review the jail cells and order her daughter’s immediate release.¹⁴¹

146. By means of Official Letter No. 420 31 DI/K-6/DDHH/30.01.13 of November 6, 1992, the then Brigadier General of the 31st Infantry Division of the General Command, request information from the Chief of National Police of Huancayo about the possible detention of Cory Clodolia Tenicela Tello.¹⁴²

147. The state informed that, on July 22, 2003, the Fourth Provincial Criminal Prosecution Service of Huancayo enlarged the investigations that were being carried out to include among them the case of Cory Clodolia Tenicela Tello, as instructed by the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves.¹⁴³ On March 5, 2010, the Third Provincial Criminal Prosecution Service of Huancayo formally filed criminal proceedings against the presumed perpetrators of the crime of aggravated kidnapping—against personal liberty—, as set forth in Article 152 of the 1991 Criminal Code, to the detriment of Cory Clodolia Tenicela Tello.¹⁴⁴ On that basis and in the Final Report of the Truth and Reconciliation Commission, the First Criminal Court launched a criminal investigation against various persons appearing in case file 661-2010.¹⁴⁵

148. In that respect, the state informed that the “registration of Ms. Cory Clodolia Tenicela Tello in the Consolidated Registry of Victims was done ex officio, because it was included in the Final Report of the Truth and Reconciliation Commission.”¹⁴⁶ Likewise, in communications of June 15, 2012 and December 10, 2013, it indicated that it was in the stage of evaluating and specifying the charges for the case, pointing out that, if the various stages are completed, the next of kin can be incorporated as beneficiaries of the Integral Reparations Plan.¹⁴⁷ The Commission noted that, when the present report was being drafted, the determination was still pending. Likewise, the Commission noted that the List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000 indicated that the disappearance of Cory Clodolia Tenicela Tello was also documented by COMISEDH and the Office of the Human Rights Ombudsperson.¹⁴⁸

¹³⁸ Annex 59. Initial petition received on June 10, 2003.

¹³⁹ Annex 60. Complaint filed with the Provincial Prosecution Service of Junín on October 14, 1992. Annex to initial petition.

¹⁴⁰ Annex 61. Habeas corpus petition filed on October 26, 1992. Annex to initial petition.

¹⁴¹ Annex 61. Habeas corpus petition of October 26, 1992. Annex to the initial petition.

¹⁴² Annex 62. Official letter No. 420 31 DI/K-6/DDHH/30.01.13 of November 6, 1992 from the 31st Infantry Division of the General Command of the Ministry of Defense. Annex to the initial petition.

¹⁴³ Annex 63. Communication from the state. Note No. 7-5-M/510, August 10, 2010.

¹⁴⁴ Annex 63. Communication from the state. Note No. 7-5-M/510, August 10, 2010.

¹⁴⁵ Annex 63. Communication from the state. Note No. 7-5-M/510, August 10, 2010.

¹⁴⁶ Annex 64. Communication from the state. Note No. 7-5-M/274, June 18, 2012.

¹⁴⁷ Annex 64. Communication from the state. Note No. 7-5-M/274, June 18, 2012.

¹⁴⁸ Final Report of the CVR. List of Dead and Missing Persons Reported to the Truth and Reconciliation Commission 1980-2000, page 407, E#12-1003666, available at:

[continues ...]

149. As part of the criminal proceedings with the National Criminal Chamber against various persons (case file No. 123-2010-0-JR) for the crimes against life, body, and health, under the category of aggravated homicide, and the crime against personal liberty, under the category of aggravated kidnapping, to the detriment of Cory Clodolia Tenicela Tello and others, Ruling 96-2013-1FSPN-MP-FN was issued by the First Superior Criminal Prosecution Service on September 3, 2013¹⁴⁹. This ruling indicates the following:

Between 1989 and 1993, the department of Junín became one of the areas that was hit the hardest by the internal war, and the National University of the Center of Peru (Universidad Nacional del Centro del Perú—UNCP), in Huancayo, was the stage for the struggle between the forces of law and order and the OT-SL [...]; in response, the armed forces implemented a strategy that gave priority to violence, consisting of detentions, kidnappings, and killings of students, teachers, and staff of the University suspected of belonging to terrorist organizations.¹⁵⁰

150. The ruling also points out:

The incidents that were the target of investigation took place on the basis of the same modus operandi, which consisted of selecting the victim based on intelligence reports, his/her detention in public on the streets or after breaking into his/her home, his/her internment in a place of confinement where he/she was subjected to interrogation using torture, the refusal to provide information about the detention or whereabouts of the victims; in some cases this led to their disappearance and in other cases to their extrajudicial execution. In addition, these illegal actions were systematic between the years 1989 and 1993 because the victims, who were students, teachers, and staff of the UNCP, were viewed as members of terrorist organizations; as a result, the incidents that are the target of the prosecution's investigation constitute crimes against humanity.

Furthermore, it is important to take into consideration that, during the preliminary investigation and inquiry, it has not been possible to obtain any information about the identity of all of the staff that belonged to [illegible] from 1989 to 1993 that would make it possible to determine the responsibility of the direct perpetrators, because of the Ministry of Defense's refusal to provide said information [...]; all of this obstructs total clarification of the facts and contributes to making the preliminary inquiry complicated.¹⁵¹

151. The ruling holds the Commander of the 31st Division of the Peruvian Army, during the period running from January 1991 to December 1992, and the Chief of the Civic Action Base at the UNCP, during the period running from February 1992 to February 1992, responsible for being the "perpetrators-by-means [indirect co-perpetrators] of the following illegal actions:"¹⁵²

[...]

On October 2, 1992, at 17:00, Cory Clodolia Tenicela Tello, student of the School of Chemical Engineering, left her home at 1487 Jr. Moquegua in the district of Tambo, and when she was

[... continuation]

<http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSanexo4/ListaMuertosyDesaparecidos.pdf>

¹⁴⁹ Annex 65. Communication from the state. Note No. 7-5-M/423, December 11, 2013

¹⁵⁰ Annex 66. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Ruling 96-2013-1FSPN-MP-FN of the First Superior Criminal Prosecution Service of September 3, 2013, page 1.

¹⁵¹ Annex 66. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Ruling 96-2013-1FSPN-MP-FN of the First Superior Criminal Prosecution Service of September 3, 2013, page 21.

¹⁵² Annex 66. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Ruling 96-2013-1FSPN-MP-FN of the First Superior Criminal Prosecution Service of September 3, 2013, page 8.

in the downtown district of the city she was detained by members of the Peruvian Army because she was not carrying her identity papers, and since then she has been registered as a missing person.¹⁵³

152. The National Superior Criminal Prosecution Service formally filed the criminal proceedings against both persons and the First Criminal Court of Junín ordered a preliminary writ of inquiry, as well as an instruction for restricted attendance, declaring that the process was complex both because of the diversity of the agents and victims involved and because of the high number of proceedings that needed to be filed. In that respect, on the basis of Ruling 96-2013-1FSPN-MP-FN, the Prosecution Service requested the National Criminal Chamber to extend the time-limits by 60 days so that the Criminal Judge could proceed to conduct more proceedings. As for the case of Cory Clodolia Tenicela Tello, it was requested that statements be taken from the witnesses Ms. Amadea Felipa Tello Barrera, who is Cory's mother, and Norma Juana Tenicela Tello, who is Cory's sister.¹⁵⁴ By means of the court ruling of September 5, 2013, the National Criminal Court ordered a 60-day extension for the preliminary inquiry so that the proceedings indicated in Ruling 96-2013-1FSPN-MP-FN could be filed and ordered referral of the case to the First National Criminal Court.¹⁵⁵ The Commission does not have information about the proceedings that might have been filed to fulfill the request in the above-mentioned report.

VI. LEGAL ANALYSIS

C. Rights to the recognition of juridical personality, personal liberty, humane treatment, and life (Articles 3, 7, 5, and 4, in relation to Article 1(1) of the American Convention); and the obligation provided for in Article I(a) of the Inter-American Convention on Forced Disappearance of Persons

153. Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello disappeared from their daily activities at different moments from 1984 to 1992 in the context of the armed conflict in Peru in which forced disappearance was systematically used as a means for combating terrorism. Some of these persons were previously detained by authorities of the State. In addition, several of them are situated precisely within the profile of selective victims of this grave human rights violation and its *modus operandi* at the time. In this section the Commission will analyze whether what happened to these five persons constituted a forced disappearance and, therefore, whether there was a violation of the rights to recognition of juridical personality, life, humane treatment, and personal liberty to their detriment, in relation to the State's obligation to respect rights.

154. Article 3 of the American Convention provides:

Every person has the right to recognition as a person before the law.

155. Article 4(1) of the Convention stipulates:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

156. Article 5 of the Convention establishes:

¹⁵³ Annex 66. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Ruling 96-2013-1FSPN-MP-FN of the First Superior Criminal Prosecution Service of September 3, 2013, page 15.

¹⁵⁴ Annex 66. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Ruling 96-2013-1FSPN-MP-FN of the First Superior Criminal Prosecution Service of September 3, 2013, page 30.

¹⁵⁵ Annex 67. Communication from the state. Note No. 7-5-M/423, December 11, 2013. Resolution 8 of September 5, 2013 issued by the National Criminal Chamber as part of case file 123-2010-0-JR.

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

157. Article 7 of the Convention provides:

Every person has the right to personal liberty and security.

158. Article 1(1) of the Convention reads:

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.

159. Article I(a) of the Inter-American Convention on Forced Disappearance of Persons stipulates that:

Article I

The States Parties to this Convention undertake:

(a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.

1. General considerations on the forced disappearance of persons

160. From its first cases the Inter-American Court has referred to the practice of forced disappearances, noting that

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.¹⁵⁶

161. In this respect, the Commission should recall that the international responsibility of a state may be based on acts or omissions by any branch of government or organ of the state that violates the American Convention, and it arises immediate with the internationally wrongful act attributed to the state. In such circumstances, in order to establish that there has been a violation of the rights enshrined in the Convention one need not determine, as occurs in domestic criminal law, the guilt of the perpetrators or their intent, nor must one individually identify the agents to whom the violations are attributed, nor "prove the State's responsibility beyond all reasonable doubt." It is sufficient to show "that acts or omissions have been

¹⁵⁶ I/A Court HR., *Case of Blake v. Guatemala*. Preliminary Objections. Judgment of July 2, 1996. Series C No. 27, para. 66.

verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet.”¹⁵⁷

162. As regards the characteristics of the offense of forced disappearance, the Commission and the Court have indicated that the Inter-American Commission on Forced Disappearance of Persons, like different international instruments¹⁵⁸, establishes as concurrent and constitutive elements of forced disappearance: (a) the deprivation of liberty; (b) the direct intervention of state agents or their acquiescence; and (c) the refusal to recognize the detention and to reveal the fate or whereabouts of the person in question.¹⁵⁹

163. In addition, forced disappearance has been defined as a continuing or permanent offense, which in turn means that its effects are prolonged over time until the victim’s fate or whereabouts are established. This characteristic places the State in a situation of continuing violation of its international obligations until such time as the victim’s fate is clarified.¹⁶⁰

164. The Inter-American Court has noted that given its nature as a violation entailing multiple offenses that is permanent and autonomous, a possible forced disappearance should not be analyzed in an isolated, divided, and fragmented manner, focused solely on the detention or possible torture, or the risk the person in question may lose their life, but rather the focus should be on the whole set of facts presented in the case under consideration.¹⁶¹ The integral treatment of forced disappearance as a complex form of violation of human rights has led the Court to analyze jointly the violation of several rights recognized in the Convention.¹⁶²

165. Accordingly, the Court has used an integral approach to the forced disappearance of persons considering the plurality of conducts which, tied together by a sole purpose, permanently violate legal interests protected by the American Convention.¹⁶³ In particular, in cases of forced disappearance the Court has jointly analyzed the violation of the rights to recognition of juridical personality, to life, to humane treatment, and to personal liberty, enshrined in Articles 3, 4, 5, and 7 of the Convention, respectively.¹⁶⁴

166. Accordingly, for example, as regards the right to juridical personality, in the case *Anzualdo Castro v. Peru* the Court stated:

¹⁵⁷ I/A Court HR, *Case of González Medina and family members v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012 Series C No. 240, para.133; *Case of Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 112.

¹⁵⁸ The Court makes reference to the following instruments; Economic and Social Council of the United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, General Comment on Article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of January 15, 1996. (E/CN. 4/1996/38), para. 55; and Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

¹⁵⁹ IACHR, Report No. 111/09. Case 11,324. Merits. Narciso González Medina. Dominican Republic. November 10, 2009. Para. 130; and I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

¹⁶⁰ IACHR, Application to the Inter-American Court in the *Case of Renato Ticona Estrada et al. (12.527) against the Republic of Bolivia*, August 8, 2007, para. 108.

¹⁶¹ I/A Court HR, *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 56.

¹⁶² IACHR, Report No. 101/01, Case 10.247 et al., Extrajudicial Executions and Forced Disappearances of Persons, Peru, October 11, 2001, para. 178, available at www.cidh.oas.org/annualrep/2001sp/Peru10247.htm; and I/A Court HR, *Case of Tiu Tojin v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, and *Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191.

¹⁶³ I/A Court HR, *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 138.

¹⁶⁴ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paras. 51-103; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, paras. 138-59.

In cases of forced disappearance, given the multiple and complex nature of this serious human rights violation, the Tribunal reconsiders its previous position and deems it is possible that, in this type of cases, the forced disappearance may entail a specific violation of said right: despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society, the State.¹⁶⁵

167. As regards the right to humane treatment, in particular, the Inter-American Court has recognized that forced disappearance is a violation of that right, for "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment..."¹⁶⁶ Specifically, the Court has established that it is clear that the right to humane treatment is violated in all its dimensions in cases of forced disappearance.¹⁶⁷

168. In addition, and as indicated in the facts proven, evidence in the form of indicia or presumptions is especially important in cases in which forced disappearance is alleged and in which it can be shown that there is a state practice of disappearances carried out by a government or at least tolerated by it. Regarding indirect and circumstantial evidence, in the case of *Blake v. Guatemala*, the Inter-American Court noted:

The Court deems it possible for the disappearance of a specific individual to be demonstrated by means of indirect and circumstantial testimonial evidence, when taken together with their logical inferences, and in the context of the widespread practice of disappearances. In a case such as this, the Court has always maintained that a judgment can be based on evidence other than direct documentary and testimonial evidence. Circumstantial evidence, indications, and presumptions may also be admitted when they lead to consistent conclusions with regard to the facts.¹⁶⁸

169. The Court has also indicated that:

The Commission's argument relies upon the proposition that the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference. Otherwise, it would be impossible to prove that an individual has been disappeared.¹⁶⁹

2. Analysis of the specific cases

170. Mindful of the foregoing, the Commission will analyze, in this section, whether in the case of the five alleged victims one finds the constitutive elements of forced disappearance of persons in the

¹⁶⁵ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90.¹⁶⁵

¹⁶⁶ I/A Court HR, *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras. 156 y 187; *Case of the Miguel Castro Castro Prison*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 323; I/A Court HR *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

¹⁶⁷ I/A Court HR, *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

¹⁶⁸ I/A Court HR. *Case of Blake v. Guatemala*, Judgment of January 24, 1998, Series C No. 36, para. 49.

¹⁶⁹ I/A Court HR. *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, para.124.

following order: (i) The deprivation of liberty by state agents; and (ii) the denial of the deprivation of liberty or the refusal to provide information about the fate or whereabouts of the person concerned.

171. Both elements will be analyzed starting from the existence of a context already recognized by the Inter-American Commission and the Inter-American Court, as well as by the Truth and Reconciliation Commission, according to which at the time of these disappearances forced disappearance of persons was used systematically in the context of the struggle against terrorism. In addition, the Commission will give special consideration to certain characteristics and *modus operandi* of said use of forced disappearance in the terms described in the section of this report on context.

2.1 The deprivation of liberty by state agents

172. The Commission observes that with respect to three of the persons disappeared – Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Cueto – there is information on a deprivation of liberty by state agents.

173. Specifically, as regards **Santiago Antezana Cueto** there is sufficient information that indicates that on May 7, 1984, he was detained by a group of persons and was subsequently turned over to officers at the military base of Acobamba, where he remained deprived of liberty for at least eight days, and it can be inferred that he was subjected to torture. In this respect, there is the testimony of his uncle, Máximo Antezana Cueto, who was detained with him and who was released on May 15, 1984. This person stated that he was tortured and that his nephew, Santiago Antezana Cueto, was detained with him at that military base at the time he was released. There is also a document from the Public Ministry that describes the detention and transfer of Santiago Antezana Cueto, and reference is made to the testimony of Ofelia Antezana Cueto, who said that she witnessed both the detention and the hand-off to the members of the military. There are also letters from family members and members of the peasant community of the zone where it is alleged that these events unfolded. The Commission also notes the complaint by Santiago Antezana Cueto's wife, who indicated that she was informed at the military base that he had been detained there but was transferred. In other complaint filed with the Public Ministry, his wife also made reference to the testimony of another person who informed her that when that person went to look for a family member at said based, she saw Santiago Antezana Cueto and his uncle "digging land" ("*escarbando tierra*").

174. As regards **Néstor Rojas Medina**, there is also sufficient information that indicates that on January 26, 1991, he was detained by the National Police in the zone of Tocache, department of San Martín, when he went there in searching of some belongings after a displacement in that zone two months earlier. In this respect, there is information that indicates that in June 1992, the Public Ministry communicated to the family members that the person responsible for the detention is the Chief of the Police Command of Tocache. Consuelo Leijas Landa also gave testimony, which indicates that Néstor Rojas Medina and another person were stopped by police officers as they were walking. In addition the Office of the Human Rights Ombudsman, on analyzing the case in 2006, made reference to a series of probative elements. Specifically, reference was made: (i) to an official note of March 21, 1991, from the Senate to the Public Ministry reporting that a senator communicated with the Chief of the Police Command of Tocache, who confirmed that Néstor Rojas Medina was turned over to the Armed Forces; (ii) the testimony for reference by his mother, Marcelina Medina Negrón, who said that she received information that he was detained by police and eight days later was transferred to a military base; and (iii) the testimony of two aunts who indicated that they had learned from a woman by the name of Maruja Ávila Pino who informed them that Néstor Rojas Medina was detained by the Police, in response to which they went to the military base where they were told that he was there. The Office of the Human Rights Ombudsman itself, in its analysis, concluded that the evidence that has been collected points to the detention by the Police, the transfer to the police facility (*la Comisaría*), and the subsequent transfer to the military base. Accordingly it was determined that there are sufficient elements to reasonably presume that it was a forced disappearance.

175. As regards **Cory Clodolia Tenicela Tello**, there is information that indicates that she was detained by agents of the State, in a public place, on October 2, 1992, since she did not have her identification. In this respect, in the writ of *habeas corpus* filed by her mother on October 26, 1992, it was indicated that

Cory Clodolia Tenicela Tello was detained and taken to the Department of Criminal Investigation. In the same document, the mother indicated that on October 22, 1992, her home was searched and she was given to understand by the lieutenant of the technical police that her daughter was detained. In addition, an opinion (*dictamen*) of the Public Ministry on the case, prepared in 2013, indicates that she was detained in a public place. There are several elements that strengthen this information on the detention by state agents. Cory Clodolia Tenicela Tello, at the time of her disappearance, was a student of the Universidad Nacional del Centro del Perú which, as has been noted, along with the Universidad Nacional de San Marcos and other universities, became a scenario of violence. Within the same report of the Office of the First Superior Criminal Prosecutor (Primera Fiscalía Superior Penal), within the criminal proceeding with respect to the case of Cory Clodolia Tenicela Tello reference is made precisely to the *modus operandi* followed at the time of the facts in selecting the victim, and in her disappearance, and it is indicated that “in addition, these illicit acts were systematic, from 1989 to 1993, as the victims, students, professors, and workers of the UNCP were considered members of terrorist organizations; accordingly, the events that are the subject of the investigation constitute crimes against humanity.” Another element of the *modus operandi* described by the Truth and Reconciliation Commission and that is present in the case of Cory Clodolia Tenicela Tello has to do with the searches conducted at the victims’ homes to look for information on their supposed ties with terrorist groups.

176. While the cases of Wilfredo Terrones Silva and Teresa Díaz Aparicio do not include specific information about detentions, the Commission finds that from the information available on the circumstances surrounding the detention and their profiles, it is possible to infer that the security forces considered them sympathizers of Shining Path and that their disappearance was committed by state agents in the context already described in this report.

177. In the case of **Wilfredo Terrones Silva** the Commission determined that he was last seen on August 26, 1992. As for his profile, Mr. Terrones Silva was a member of the Asociación Abogados Democráticos and represented persons being tried on terrorism charges. The State itself reported that Mr. Terrones Silva was accused as assistant base director and leader of Shining Path in the province of Jaén. In addition to the profile that allows one to identify Mr. Terrones Silva as a potential victim of the context already noted, the Commission has a news article that makes reference to an interview with a former member of the Grupo Colina who, on describing its crimes against presumed terrorists, said that one of the persons cast into the sea was “democratic lawyer Wilfredo Terrones.”

178. In the case of **Teresa Díaz Aparicio**, the Commission established that she was last seen on August 19, 1992, when after leaving her home she never made it to work. As for her profile, Teresa Díaz Aparicio was a member of the Faculty Association (Asociación de Docentes) and also worked as a member of the Social and Legal Services Commission of the Universidad Nacional de San Marcos, keeping tabs on the situation of students detained and faculty members facing judicial proceedings. As regards the relevance of her activities along similar lines to what has been indicated with respect to Cory Clodolia Tenicela Tello, it has been proven that at the time of the facts there was also a stigma attached to persons associated with certain universities, one of them the Universidad Nacional de San Marcos. The Commission notes that in the case of Teresa Díaz Aparicio there are also antecedents to take into account: (i) she was detained and her home searched by DINCOTE in 1989; and (ii) another search of her home the same year, which was referenced in a writ of *habeas corpus* and though it was denied, no investigation was carried out to refute that it had occurred. The Commission observes that the profile of Teresa Díaz Aparicio, as a person associated with terrorism, appears to be evident in the police report on the first detention, in which the police concluded that she belonged to the Shining Path support structure, and that she was in charge of providing lodging, food, medical assistance, and other necessities to the subversive group. In addition, the Commission has the testimony of her brother, Federico Díaz Aparicio, who indicated that Teresa Díaz Aparicio told him that she felt she was the target of surveillance by the National Police. The Commission also has two documents from state agencies that indicate that the information available points to a forced disappearance. Accordingly, in 2009, the Public Ministry determined that there are indicia that what happened to Teresa Díaz Aparicio was a forced disappearance, taking into account the practices of the police at that time, the prior arrest and searches, and the perception by the authorities that she was associated with Shining Path. There is an official note from the Ministry of Interior to the Ministry of Justice, in 2013, indicating that the disappearance of

Teresa Díaz Aparicio occurred in a context in which forced disappearance was a means of eliminating persons suspected of terrorism.

179. After having recapitulated the information on the disappearance of each of the alleged victims, as well as each disappearance's association with the context of the systematic use of forced disappearance, especially at the time in which each of them was last heard from, the Commission concludes that all the elements described, taken together with the lack of alternative hypotheses in the context of diligent and effective investigations – see *infra* paragraphs 190-207 – allow one to infer that Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello were detained by state security agents from 1984 to 1992.

180. In addition, the Commission emphasizes the intrinsic impairment are risk to the rights to life and integrity as the result of a deprivation of liberty in clandestine circumstances marked by incommunicado detention, defenselessness, and the total impossibility of activating legal mechanisms on one's own behalf. All these elements allow one to infer that the persons detained went through extreme suffering.

2.2 The denial of deprivation of liberty and refusal to provide information about fate or whereabouts

181. Having established the deprivation of liberty by state agents in the terms described above, the Commission notes that in every case the state authorities either denied the detention of the alleged victims or refused to provide information about their fate or whereabouts.

182. In the case of **Wilfredo Terrones Silva**, his family members indicated that they looked for him at police facilities and in hospitals without having obtained information. In addition, although there is an interview with a former member of the Grupo Colina who indicated that he was likely thrown into the sea – which would be a clear way to make impossible any determination as to his whereabouts – there is no information that indicates that there was any follow-up on this hypothesis, which made it possible to continue covering up the fate of Mr. Terrones Silva.

183. In the case of **Teresa Díaz Aparicio**, her mother indicated that she searched for her at work, in morgues, in hospitals, and at the police, without obtaining information. The writ of *habeas corpus* filed by her brother was declared out of order on procedural grounds, as there was no record of her detention; and no exhaustive search was conducted, allowing the uncertainty as to what happened to Díaz Aparicio to persist.

184. In the case of **Santiago Antezana Cueto**, at the moment of filing their complaint on March 19, 1985, the family members indicated that at the military base they were denied any information about their loved one and they were threatened, and that the same thing would happen to them if they continued insisting. His wife indicated in a subsequent amendment to the complaint that at the same base they were told that although Mr. Antezana Cueto did pass through there, but that he was transferred to Ayacucho, with no additional information.

185. In the case of **Néstor Rojas Medina**, both of his aunts who learned of his detention from the Police of Tocache went to the military base where their nephew was supposedly being held, where they were told that even though he had been held there, he was no longer there, yet they were not given any more information about where he might have been transferred.

186. In the case of **Cory Clodolia Tenicela Tello**, her mother filed a complaint with the prosecutorial authorities and a writ of *habeas corpus* in the days following her detention. Though she indicated that the lieutenant of the technical police who performed the search, days after the disappearance, gave her to understand that her daughter was detained, she was not given more information.

187. In addition to the foregoing, the Commission notes that one of the main mechanisms of concealment activated at the time in the context of the systematic use of forced disappearance was ensuring impunity. As will be analyzed in the section on the rights to judicial guarantees and judicial protection, for

long years the Amnesty Laws were in force, which impeded investigating and prosecuting the persons responsible for all human rights violations committed during the armed conflict, including forced disappearances. In addition to those laws and as will be detailed in the next section, many factors have contributed to impunity for the facts of the instant case; for the purposes of this element of forced disappearance, one can conclude that in practice they have operated so as to perpetrate the concealment and uncertainty as regards the fate or whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello.

2.2.3 Conclusion about the existence of forced disappearance

188. In view of all that has been said to this point, the Commission considers that there is sufficient information to characterize what happened to Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello as forced disappearances perpetrated by state agents, which continue to this date, considering that the fate or whereabouts of the victims has not been established. Accordingly, the Commission concludes that the Peruvian State violated and continues to violate, to their detriment, the rights to recognition of juridical personality, life, humane treatment, and personal liberty enshrined in Articles 3, 4, 5, and 7 of the American Convention, in relation to the obligations established at Article 1(1) of the same instrument. In addition, the Commission concludes that the State violated Article I(a) of the Inter-American Convention on Forced Disappearance of Persons.¹⁷⁰

¹⁷⁰ As regards the Inter-American Convention on Forced Disappearance of Persons, the Commission observes that the State of Peru deposited its instrument of ratification on February 13, 2002. Therefore, mindful of the characteristics indicated above of the offense of forced disappearance of persons, the State is responsible for violating the rights established in that Convention as of the date of ratification of that treaty and with respect to those cases of forced disappearance that persist over time.

C. The right to a fair trial and to judicial protection (Articles 8(1), 25(1), and 1(1) of the American Convention); and obligations derived from Article I(b) of the Inter-American Convention on Forced Disappearance of Persons

189. The articles of the American Convention referred to in the preceding title establish the following:

Article 8(1) Right to a Fair Trial

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.

Article 25(1) Judicial Protection

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

190. Article I(b) of the Inter-American Convention on Forced Disappearance of Persons establishes that the states parties to that Convention undertake to “punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

1. General considerations on the duty to investigate in cases of forced disappearance

191. According to the inter-American case-law, when there is a report of a forced disappearance, there is an unbreakable bond between the state response and the protection of life and integrity of the person reported disappeared. The Commission reiterates that “when there are reasonable motives to suspect that a person has been forcibly disappeared, swift and immediate action on the part of prosecutorial and judicial authorities is necessary. This may be achieved by ordering necessary and appropriate measures aimed at ascertaining the whereabouts of the victim or the location of the place in which he or she may be deprived of their liberty.”¹⁷¹

192. The Court has established that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”¹⁷² The Court has also indicated:

¹⁷¹ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221, *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See also *Matter of Natera Balboa*. Provisional measures with respect to Venezuela. Order of the Court of February 1, 2010, Thirteenth considering paragraph, and *Matter of Guerrero Larez*. Provisional measures with respect to Venezuela. Order of the Court of August 29, 2013. Sixth considering paragraph.

¹⁷² I/A Court HR, *Case of Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 124; I/A Court HR, *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C No. 163. Para. 145; I/A Court HR, *Case of the Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Para. 381; and I/A Court HR, *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158, Para. 106.

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.¹⁷³

193. As the IACHR has indicated, the State has the following obligation: “Each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events.”¹⁷⁴

194. Accordingly, the Court has noted that the obligation to investigate implies that once the state authorities learn of the fact, they must begin, at their own initiative and without delay, a serious, impartial, and effective investigation by all legal means available and aimed at determining the truth, and at pursuing, arresting, prosecuting, and eventually punishing all the perpetrators of such acts¹⁷⁵, especially when state agents are or may be involved.¹⁷⁶ This duty is an obligation of means and not of results that must be assumed by the state as its own legal duty, and not as a mere formality doomed beforehand to be fruitless, or as a mere initiative of private interests that depends on the procedural initiative of the victims or their family members, or the private production of evidence.¹⁷⁷ The state’s duty to investigate must be carried out diligently to avoid impunity, and to prevent the recurrence of such acts.¹⁷⁸

195. The Inter-American Court has established that for a remedy to be effective it does not suffice for it to be provided for by the Constitution or by statute, or that it be formally admissible, but rather it must be suitable to establish whether there has been a human rights violation and provide as necessary to remedy it.¹⁷⁹

196. It follows that if one of the objectives of forced disappearance is to impede the exercise of the relevant legal remedies and procedural guarantees, when a person is subjected to a detention, kidnapping, or any form of deprivation of liberty with the objective of bringing about his or her forced disappearance, if the very victim cannot accede to available remedies, it is fundamental that the family members or persons close to them can accede to swift and effective judicial procedures or remedies to determine his or her

¹⁷³ I/A Court HR, *Case of García Prieto et al.* Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Para. 102; I/A Court HR, *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. Para. 227; and I/A Court HR, *Case of Serrano Cruz Sisters. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, Para. 63.

¹⁷⁴ IACHR, Report No. 85/13, Case of 12,251, Admissibility and Merits, Vereda la Esperanza, Colombia, November 4, 2013, para. 242. I/A Court HR, *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 101.

¹⁷⁵ I/A Court HR. *Case of Velásquez Rodríguez. v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

¹⁷⁶ I/A Court HR. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

¹⁷⁷ I/A Court HR. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections. Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

¹⁷⁸ I/A Court HR. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006, Series C. No. 148, para. 319; *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183; and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para., 216.

¹⁷⁹ I/A Court HR. *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, para. 61; *Case of “Five Pensioners.”* Judgment of February 28, 2003. Series C No. 98, para. 136, and *Case of Mayagna (Sumo) Community of Awás Tingni*. Judgment of August 31, 2001. Series C No. 79, para. 113.

whereabouts or health or to individually identify the authority who ordered the deprivation of liberty or carried it out.¹⁸⁰

197. The Court has established the duty of the state to investigate the facts so long as there is still uncertainty as to the fate of the disappeared person and the need to provide a simple and prompt remedy for the case, with proper guarantees.¹⁸¹ The Commission recalls in this regard that the states must guarantee the right to the truth of the victim or his or her family members by means of the investigation and trial provided for in Articles 8 and 25 of the Convention.¹⁸²

198. Finally, as regards the right to know the truth, it has been recognized in various instruments of the United Nations and recently by the General Assembly of the Organization of American States (OAS).¹⁸³ The Inter-American Court has determined the content of the right to know the truth, in particular, in cases of forced disappearance. In the *Case of Velásquez Rodríguez v. Honduras*, the Court affirmed the existence of a “right of the relatives to learn the fate of the person and, if they have been killed, the location of their remains.”¹⁸⁴ In cases such as these it is understood that the relatives of the disappeared person are victims of the acts that constitute forced disappearance, which confers on them the right to have the facts investigated and the persons responsible prosecuted and, if found guilty, punished.¹⁸⁵ The Commission and the Court have recognized that the right to know the truth as a right that accrues to the family members of the victims of serious human rights violations as part of the right to access justice.¹⁸⁶

199. Along the same lines, the Court has held that:

the right to know the truth [has] a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, on the one hand, by means of the obligation to investigate human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society.¹⁸⁷

¹⁸⁰ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 64.

¹⁸¹ I/A Court HR., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 197.

¹⁸² I/A Court HR., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 147.

¹⁸³ Updated Set of principles for the protection and promotion of human rights through action to combat impunity de (E/CN.4/2005/102/Add.1). Report of the independent expert to update the Set of principles to combat impunity, Diane (E/CN.4/2005/102, February 18, 2005). Study on the right to the truth: Report of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2006/91, January 9, 2006). General Assembly of the OAS. Resolutions on the Right to Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/07), and AG/RES. 2406 (XXXVIII-O/08).

¹⁸⁴ I/A Court HR, *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C. No. 4, para. 181.

¹⁸⁵ I/A Court HR, *Case of Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 97.

¹⁸⁶ IACHR. The Right to Truth in the Americas. OEA/Ser.L/V/II.152. Doc. 2. August 13, 2014. Para. 8; I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009, Series C No. 202, para. 118.

¹⁸⁷ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009, Series C No. 202, para. 119.

2. Analysis of whether the State carried out its duty to investigate with due diligence and in a reasonable time

200. First, the Commission notes that in Peru amnesty laws No. 26,479 and No. 26,492 were in force from 1995 to 2001; they impeded the investigations of serious human rights violations committed during the armed conflict. Both the Inter-American Commission and the Inter-American Court have ruled on several occasions that those amnesty laws are incompatible with Peru's treaty obligations, as they are a source of impunity for those violations.¹⁸⁸ Specifically, in *Barrios Altos* case against Peru, the Inter-American Court declared that the amnesty laws "are incompatible with the Convention ... [and so] lack legal effect."¹⁸⁹ Specifically, in the Court's interpretation it found: Enactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is per se a violation of the Convention for which the State incurs international responsibility [and that] given the nature of the violation that amnesty laws No. 26479 and No. 26492 constitute, the decision in the judgment on the merits in the *Barrios Altos* Case has generic effects."¹⁹⁰

201. Considering that those laws were in force generally during this period, and mindful of the absolute lack of information on investigations conducted in the cases that are the subject matter of this report while they were in force, the Commission considers it sufficiently shown that the Amnesty Laws constituted a legal obstacle that impeded the investigations of forced disappearances committed in the instant case.

202. Second, the Commission considers that in cases such as those addressed in this report, it is up to the State to show that its authorities carried out their obligations under the American Convention and the Inter-American Convention on Forced Disappearance of Persons from the time that it came into force for the state in question. Specifically, the State has the burden of showing that the authorities proceeded diligently with the investigations after being informed of a disappearance. Before getting into the analysis of the investigations carried out in this case, the Commission notes that the State produced minimal information in this respect.

203. Accordingly, the analysis by the Commission is based on the scant information available on the investigations in each of the cases.

a) In the case of **Wilfredo Terrones Silva**, while the Commission does not have a copy of the internal files, from the information provided by the parties it is noted that even though this forced disappearance was reported two days later to the Office of the 15th Criminal Prosecutor of Lima (Décima Quinta Fiscalía Penal de Lima), no criminal investigation was opened into the crime reported, nor were any immediate actions taken such as those that would correspond to a report of forced disappearance. The investigative measures carried out by the State, according to information it has provided, consisted of sending of official notes to various authorities requesting information from their data bases. According to the information that has come to the attention of the Commission, as of the date of this report no criminal inquiry has even been initiated into the disappearance of Wilfredo Terrones Silva, which makes clear the failure of the State to carry out its duty to investigate.

b) In the case of **Teresa Díaz Aparicio**, the IACHR observes that in response to the initial petition of September 2, 1992, that is 15 days after the disappearance of Professor Diaz Aparicio, the State sent official notes or notices to several authorities inquiring into her situation. There is no information suggesting that the Public Ministry ordered that any actions be taken immediately in order to clarify the facts and establish the whereabouts of Teresa Díaz Aparicio, especially taking into account the specific indicia in

¹⁸⁸ IACHR. Application before the Inter-American Court of Human Rights against the Republic of Peru. Case 11,528 "Barrios Altos," May 10, 2000. Para. 126.

¹⁸⁹ I/A Court HR, *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, paras. 41-44 and fourth operative point.

¹⁹⁰ I/A Court HR, *Case of Barrios Altos v. Peru*. Interpretation of the Judgment on the Merits. Judgment of September 3, 2001. Series C No. 83, paragraph 18 and second operative point.

the initial petition. From the record in the possession of the IACHR, one notes procedural inactivity and lack of investigative steps from 1993 to 2002, when the Public Ministry took up the investigation once again, in September 2002, after the dismissal by the First Chamber of the Superior Court of Justice of a writ of *habeas corpus* presented by Federico Díaz Aparicio in February 2002. In other words, the Public Ministry, through the Office of the Special Prosecutor (Fiscalía Especializada), once again took up the investigation more than 10 years after the forced disappearance of Professor Díaz Aparicio, noting that in the past there had been flaws in the investigations, considering that important investigative measures were not taken. In view of the foregoing, for the first time statements were taken from family members and others close to her, as well as different offices of the State, such as the Ministry of Interior, DIRCOTE, the National Office of Elections, Division of Examinations of the National Police, the National Prison Institute, Universidad Nacional Mayor de San Marcos, hospitals, and morgues in the province of Lima. It should be noted that as of that date, important evidence had already been lost, including the possibility of questioning Teresa Díaz Aparicio's mother and one of her brothers, as they had died.

The State justified its inaction based on the late filing of the writ of habeas corpus by her brother, stating that this contributed to "the loss of information that would have made it possible to expand the line of investigation [which] was not due to negligence attributable to the Peruvian State but to the late filing of the report to the corresponding judicial authorities." The Commission reiterates the Inter-American case-law, which establishes that whenever there are reasonable grounds for presuming that a person has been forcibly disappeared, an investigation should begin at the initiative of the investigative authorities, without delay, and in a serious, impartial, and effective manner, such that the action should not have to rely on the victim's family members.

The Commission observes that even though the Office of the Second Super-provincial Criminal Prosecutor decreed the provisional archiving of the matter in February 2009, given that based on the record it had not been possible to identify the persons presumably responsible for the forced disappearance of Teresa Díaz Aparicio, it referred the matter to the Division of the Police of the Public Ministry to continue investigating; that was to report on progress every three months. From the available record, the IACHR observes that none of the communications describe what kind of additional investigative steps the Division of the Police of the Public Ministry took to clarify the facts reported, nor do they indicate that new lines of investigation were proposed or pursued. The Commission notes that in 2012, the prosecutorial office in charge asked the National Criminal Chamber and the Special Criminal Chamber to provide information on persons subject to the Law on Effective Collaboration, who were prosecuted for forced disappearance in 1992, to call them in for questioning. In addition, there is an official document in which it is suggested that one consult, in the files relating to the Grupo Colina, as to whether there is information related to this victim. There is no information whatsoever that indicates that these investigative steps were ever taken or about any follow-up in this regard.

c) As regards the case of **Santiago Antezana Cueto**, it is observed that although a complaint was filed for his disappearance on March 19, 1985, it was not until 1992, when his common-law wife turned to the Public Ministry to inquire into the investigation and amend the complaint, that it was ordered that a new investigation be initiated as it was assumed that the first complaint received was in the office whose files "were burned during the subversive attack that occurred in 1989." There is no information whatsoever about investigative steps pursued after the complaints lodged by the family members of Santiago Antezana Cueto. The Commission observes that the common-law wife of Mr. Santiago Antezana Cueto ratified her complaint to the Public Ministry on June 25, 2001 and filed a new complaint on November 25, 2004, against the Peruvian army captain known by the nickname of "Scorpion" for the forced disappearance of Santiago Antezana Cueto; it was not until July 31, 2009 that the Office of the Supra-provincial Provincial Criminal Prosecutor Criminal for Huanavelica formalized the criminal complaint against that same person. On July 9, 2013, the criminal proceeding was in the oral trial phase and there is no up-to-date information on the outcome of that trial.

d) As for the case of **Néstor Rojas Medina**, the Commission observes that on February 5, 1991, an initial complaint was lodged with the Office of the Provincial Prosecutor of Tocache; that year a statement was taken from Néstor Rojas Medina's mother, and according to information that the Commission has, it was not until April 2000 that the Office of the Prosecutor ruled to forward the investigation to the police so as to

continue the investigations to locate him. Subsequently, it was decreed that the case be provisionally archived, as there was no certainty as to who detained Néstor Rojas Medina. In September 2004, the mother of Néstor Rojas Medina presented a new criminal complaint to the Office of the Special Prosecutor for Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves, which began to be processed, also in September 2004; official notes were sent to several authorities requesting information, and in April 2005, statements were received in the context of the inquiry. Nonetheless, the Commission notes that there is no information on any investigative step taken in the period from 2005 to 2011. Even though in 2011 it was ordered that certain investigative measures be taken, there is no information on whether they were actually carried out. It should be mentioned that some of them were of vital importance for the investigation, as in the case of the official notes to the Ministries of Defense and Interior, asking for information about the chiefs in charge of the police station in the area on the date of the disappearance. Despite that, there is no follow-up measure. To the contrary, the State only reported that in January 2013, the Office of the First Corporate Provincial Prosecutor of Tocache ruled to archive the investigation.

e) In the case of **Cory Clodolia Tenicela Tello**, her mother filed a criminal complaint and writ of *habeas corpus* in October 1992. The Commission observes that it was not until July 22, 2003 that the Office of the Fourth Provincial Prosecutor of Huancayo included the case of Cory Clodolia Tenicela Tello in the investigations he was undertaking. Subsequently, on March 5, 2010, a criminal complaint was formalized against the presumed perpetrators of the crime of aggravated kidnapping (*secuestro agravado*). By ruling of September 3, 2013, a complaint was formalized against the Commander of the 31st Division of the Peruvian Army and the Chief of the Civic Action Base of the UNCP, as the presumed indirect perpetrators. The Commission does not have information about investigative measures carried out since September 2013, in the context of that criminal proceeding. Based on the information produced by the State, the victim's case was included in the group of cases of forced disappearance, without having specified in detail the investigative measures taken with respect to Ms. Tenicela Tello. The Commission also notes that in that ruling of September 3, 2013, the Public Ministry stated for the record the refusal of the Ministry of Defense to produce information relevant to the investigation.

204. The Commission notes that in none of the cases has the State provided information on specific actions taken immediately, upon learning of the disappearances alleged, to determine the whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, or Cory Clodolia Tenicela Tello, or to protect their life and integrity. In addition, all the criminal proceedings that were initiated in this respect have been subject to unwarranted delays and prolonged periods in which no step was taken aimed at clarifying the facts. From the description in the preceding paragraphs, it turns out that the few investigative steps that have been taken were from any point of view insufficient and do not respond to the specific indicia that result from the reports by their family members, other evidence elements, and the relationship of such reports and evidence with the already-established context of the systematic use of forced disappearance. The information available indicates that the very limited investigative activity does not respond to that context or to the *modus operandi* specifically established by the Truth and Reconciliation Commission, even though, as already analyzed, in the five cases there is information that associates them with the State. Moreover, in the case of Wilfredo Terrones Silva, the Commission observes that no criminal investigation was even opened into his disappearance, even though there was knowledge of it within days of the facts.

205. The Commission observes that as of the day of the adoption of this report, 23 to 31 years have elapsed since the beginning of these five forced disappearances, they have not yet been clarified, and the State has not presented an explanation that would justify the prolonged delays and lack of initiative. Accordingly, the Commission considers that the State has engaged in an excessive delay in the investigations and that they are not based on the complexity of the matter but rather on the lack of due diligence by the State.

206. In view of the foregoing considerations, the Commission concludes that the State of Peru has not deployed the means necessary to perform its duty to investigate, prosecute, and punish, within a reasonable time, and with due diligence, those responsible for the five forced disappearances analyzed in this report. Accordingly the Commission concludes that the State of Peru is responsible for violating the rights to

judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello and their family members indicated throughout this report. In addition, the State of Peru is responsible for violating Article 1(b) of the Inter-American Convention against Forced Disappearance of Persons.

D. Right to humane treatment (Article 5(1) and 5(2) in relation to Article 1(1) of the American Convention) and rights to a fair trial and to judicial protection (Articles 8(1) and 25(1) of the American Convention) in relation to Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Santiago Antezana Cueto

207. As a preliminary matter, the Commission notes that in several communications the petitioners indicate that they reported to the competent authorities both the detention and disappearance of Santiago Antezana Cueto, as in the case of other community members. They also indicated that “even though the evidence attached and the first complaints note other victims, the Peruvian State has not considered them, and they were set aside in the process and the only one considered as a disappearance in Manyacc was Santiago Antezana.”¹⁹¹ From Commission’s analysis of the information and documentation presented by the parties, one notes that in effect the authorities had vast knowledge of the disappearances of those community members. In Report No. 194-2013-JUS/PPES of July 9, 2013, the State argues that the Public Ministry, as the only party that can bring a criminal action, is the only entity that, according to its powers granted by the Constitution of Peru and its Organic Law, characterizes and decides who is considered an injured party in a criminal proceeding.

208. Without prejudice to the foregoing, the Commission highlights that from the presentation of the petition and throughout the process before the Commission, the petitioners have only identified Santiago Antezana Cueto as a presumed victim. The Commission has not received detailed information, subject to adversarial procedure, throughout the processing of the matter in the inter-American system with respect to the cases of other persons who disappeared and who appear in the Manyacc Annex such that one could effectuate a separate analysis with respect to the disappearance of these persons. Consequently, in this report the Commission will not rule on the alleged disappearances of other community members detained in the same circumstances.

209. As indicated *supra*, Article 5 of the American Convention enshrines, in general terms, the right to humane treatment, in respect of physical, mental, and moral integrity. For its part, Article 5(2) more specifically establishes the absolute prohibition on torture or cruel, inhuman or degrading treatment, as well as the right of every person deprived of liberty to be treated with the respect for their inherent dignity as human persons.

210. Article 2 of the Inter-American Convention to Prevent and Punish Torture defines torture as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose.”

211. In addition, the Court has established that an act constitutes torture when the mistreatment: (a) is intentional; (b) causes severe physical or mental suffering; and, (c) is committed with any aim or purpose.¹⁹²

¹⁹¹ Annex 68. Communication from the petitioners, September 15, 2011.

¹⁹² I/A Court HR. Case of Bueno Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 79. I/A Court HR. Case of I. v Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 364

212. The Commission considers that the statements – referred to at paragraphs 118 ff. – by Ms. Rosa Carcausto and, above all, the statements by Mr. Máximo Antezana, who as proven *supra* at paragraphs 117 ff., was detained with Santiago Antezana Cueto, taken together with the context, which also included the use of torture prior to the disappearance of the person detained, are sufficient to infer that Mr. Santiago Antezana Cueto was a victim of torture in the facilities of the Acobamba Military Base. The Commission also takes into account that during the processing of the instant case the State learned of the allegations which, in this respect, were made by the petitioners without expressly controverting them, and without reporting on the existence of investigations specifically aimed at establishing these facts.

213. Similarly, the Commission observes that the family members of Santiago Antezana Cueto reported those acts of torture on several occasions to the competent authorities in Peru. Nonetheless, as of the date of this report, the State has not provided any information on the lines of investigation pursued and the petitioners affirm that “the allegations of torture have not been investigated ... acts which to this day continue in impunity, as they have not been investigated or taken into account by the State.”¹⁹³

214. The Commission recalls that in cases in which torture is alleged, the obligation to investigate is reinforced by the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, according to which the State is obligated to “take effective measures to prevent and punish torture within their jurisdiction,” as well as to “take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment.” In addition, Article 8 of that Convention notes that

if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

215. In view of the foregoing considerations, the Commission concludes that the State violated the right to humane treatment established at Articles 5(1) and 5(2) of the American Convention to the detriment of Mr. Santiago Antezana Cueto for the torture to which he was subjected at the Acobamba Military Base. The State also violated the rights to a fair trial and to judicial protection contained in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument. The Commission considers that the State also violated Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

E. Obligation to adopt provisions of domestic law related to codifying the crime of forced disappearance of persons (Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons)

216. Article 2 of the American Convention provides:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

217. Article III of the Inter-American Convention on Forced Disappearance of Persons establishes:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

¹⁹³ Annex 69. Communication from the petitioners, January 17, 2014.

The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

218. In the judgment of the Inter-American Court in the case of *Gómez Palomino v. Peru* of November 22, 2005, that court concluded that the definition of the crime of forced disappearance set forth in Article 320 of the Peruvian Criminal Code is not in line with the relevant inter-American standards, thus it ordered that it be modified in keeping with the definition set forth in Article III of the Inter-American Convention on Forced Disappearance of Persons.¹⁹⁴ That provision of the Criminal Code provides:

Any public official or servant who deprives any person of their liberty by either ordering or carrying out actions leading to the duly proven disappearance of any such person, shall be punished by imprisonment for not less than fifteen years and disqualification from office, pursuant to Article 36(1) and (2) of the Criminal Code.¹⁹⁵

219. In the case of *Gómez Palomino v. Peru*, the Inter-American Court concluded that the definition contained in the provision cited “restricts forced disappearance offenders to “public officials or servants.” and that it “does not contain all forms of criminal involvement included in Article II of the Inter-American Convention on Forced Disappearance of Persons; therefore, it is incomplete.” The Inter-American Court also underscored that Article 320 of the Peruvian Criminal Code does not incorporate the refusal to recognize the detention and reveal the fate or whereabouts of the person detained as elements of the criminal definition of forced disappearance. Finally, the Court observed that “Article 320 of the Criminal Code ... provides that the forced disappearance must be ‘duly proven,’ [which] complicates statutory construction thereof.”¹⁹⁶

220. In the case of *Anzualdo Castro v. Peru*, and subsequently in the case of *Osorio Rivera v. Peru*, the Court underscored that the text of Article 320 of the Peruvian Criminal Code had not been amended and concluded that “so long as that [article] is not correctly adapted, the State continues failing to comply with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.”¹⁹⁷ Along the same lines, by resolution of July 5, 2011 on supervision of compliance with the judgment handed down in *Gómez Palomino v. Peru*, the Inter-American Court found that “the State has not presented information on what specific actions it may have adopted to reform the criminal legislation in the terms indicated in the judgment.”¹⁹⁸

221. Given that to date the Peruvian State has not modified the criminal law definition of forced disappearance set forth at Article 320 of the Criminal Code, through the mechanisms provided for in its legal system, the IACHR considers that Peru persists in its failure to carry out the obligation to adopt provisions of domestic law, in the terms of Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons.

¹⁹⁴ I/A Court HR, *Case of Gómez Palomino v. Peru*, Judgment of November 22, 2005. Series C No. 136, para. 149 and operative point 12.

¹⁹⁵ See Law No. 26926 of January 30, 1998, Article 1, available at the Internet portal of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/26926.pdf.

¹⁹⁶ I/A Court HR, *Case of Gómez Palomino v. Peru*, Judgment of November 22, 2005. Series C No. 136, paras. 100 to 108.

¹⁹⁷ I/A Court HR, *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 167, and I/A Court HR, *Case of Osorio Rivera and family members v. Peru*, Judgment of November 26, 2013, Series C No.274, para. 212.

¹⁹⁸ I/A Court HR, Monitoring Compliance with Judgment. *Case of Gómez Palomino*, July 5, 2011, para. 37.

F. Right to humane treatment of the victims' family members (Article 5(1) in relation to Article 1(1) of the American Convention on Human Rights)

222. In numerous cases the Inter-American Court has considered that the family members of victims of human rights violations can also be victims.¹⁹⁹ In particular, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to psychological and moral integrity of the victim's family members is a direct consequence of that phenomenon, and that the forced disappearance itself causes severe suffering, which is compounded, among other factors, by the constant refusal of the state authorities to provide information about the whereabouts of the victim or to initiate an effective investigation to clarify what happened.²⁰⁰ Accordingly, the Court has considered that the continuous deprivation of the truth as to the whereabouts of a disappeared person constitutes a form of cruel and inhumane treatment for close family members.²⁰¹

223. The State also has the obligation, when facing the facts of a forced disappearance, to ensure the right to humane treatment of the family members through effective investigations to determine the whereabouts of their loved one and to identify and punish the persons responsible. Moreover, the lack of effective remedies has been considered by the Court as a source of additional suffering and anguish for the victims and their family members.²⁰² In the five cases covered in this report, and as has been established in the section on facts proven, the family members set out to search for the victims without any response by the authorities.

224. The Commission observes that to date, the family members of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello do not know the fate or whereabouts of their loved ones and have not had an adequate and effective judicial response. The State did not provide the families of these victims an effective judicial remedy that would make it possible to establish the truth, punish the director perpetrators and masterminds, and obtain the corresponding reparation.

225. One should add, with respect to case 12,224, that Ms. Rosa Carcausto Paco stated that "she was a victim of harassment and was being followed presumably by members of intelligence services in the wake of what happened to her common-law husband Santiago Antezana Cueto, from 1988 to 1997," adding that it had led her to travel to Bolivia three times, in 1988, 1994, and 1996, to safeguard her physical and psychological integrity.²⁰³

226. The Commission considers that given the nature of the facts of the case, the situation of impunity, and the necessary effects in the victims' nuclear families, the State also violated the right to humane treatment enshrined in Article 5(1) of the American Convention, in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of the family members of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, Escobar, and Cory Clodolia Tenicela Tello, who are indicated in this report.

¹⁹⁹ I/A Court HR, *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 160.

²⁰⁰ I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 105.

²⁰¹ I/A Court HR, *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 166.

²⁰² I/A Court HR, *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 113.

²⁰³ Annex 70. Communication from the petitioners, April 28, 2000.

VII. CONCLUSIONS

227. The Commission concludes that the State of Peru is responsible for violating the rights to juridical personality, life, humane treatment, personal liberty, judicial guarantees, and judicial protection enshrined in Articles 3, 4(1), 5(1), 5(2), 7(1), 8(1), and 25(1) of the American Convention in relation to Articles 1(1) and 2 of the same instrument to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello. In addition, the Commission concludes that the State is responsible for violating Articles I and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of the same persons, and also for violating Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Santiago Antezana Cueto. With respect to the victims' family members, the State is responsible for violating Articles 5(1), 8(1), and 25(1) of the American Convention in relation to Articles 1(1) and 2 of the same international instrument.

VIII. RECOMMENDATIONS

228. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF PERU,

1. Investigate thoroughly, impartially, and effectively the whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello and, as necessary, adopt the measures needed to identify and hand over the mortal remains to their family members, in keeping with their desires.

2. Conduct the domestic procedures related to the human rights violations found in this report, and carry out the appropriate procedures for the crime of forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello – and for the crimes of torture and forced disappearance of Santiago Antezana Cueto – impartially, effectively, and within a reasonable time, for the purpose of clarifying the facts completely, identifying all those responsible, and imposing the sanctions that are in order.

3. Make adequate reparation for the violations of human rights found in this report addressing both the material and moral aspects, including fair compensation, determining and disseminating the historical truth of the facts, and implementing an adequate program of services for the family members of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, in consultation with them and in keeping with their specific needs.

229. Adopt the necessary measures of non-repetition to prevent similar events from occurring in the future. In particular, order the measures necessary for strengthening the institutional capacity to investigate cases of forced disappearance of persons that occurred in the framework of the internal armed conflict to ensure that they are investigated with due diligence, in a reasonable time, and taking into account the context in which they took place as well as the criminal patterns and specific *modus operandi* that characterized them.

4. Publicly recognize the violations found in the instant case, and ensure that they are publicized by appropriate means.

5. Reform the criminal legislation so as to ensure that forced disappearance of persons is defined in the criminal code in a manner that is in line with inter-American standards.