

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF TENORIO ROCA AND OTHERS VS. PERU**

**JUDGMENT OF JUNE 22, 2016**

***(Preliminary Objections, Merits, Reparations and Costs)***

*If Tenorio Roca and others,*

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “this Court”), made up of the following judges:

Roberto F. Caldas, President;  
Eduardo Ferrer Mac-Gregor Poisot, Vice President;  
Eduardo Vio Grossi, Judge;  
Humberto Antonio Sierra Porto, Judge;  
Elizabeth Odio Benito, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62.3 and 63.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and with Articles 31, 32, 42, 65 and 67 of the Rules of Court (hereinafter “the Rules” or “Rules of the Court”), issues this Judgment, which is structured in the following order:

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### INTRODUCTION OF THE CAUSE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.*—On September 1, 2014, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted a brief (hereinafter “submission brief”) by which it submitted the case to the jurisdiction of the Inter-American Court. *Rigoberto Tenorio Roca and others regarding the Republic of Peru* (hereinafter “the State”, “the Peruvian State” or “Peru”). According to what the Commission indicated, the case refers to the alleged arrest of Rigoberto Tenorio Roca on July 7, 1984, as well as his transfer to a Navy barracks in the province of Huanta, department of Ayacucho, without his whereabouts being known since then. The Commission determined that “[t]hese events took place in a context of systematic violations of human rights in the context of the internal armed conflict in Peru, in an area and [a] period in which the use of forced disappearance against persons perceived as terrorists or collaborators with terrorism was systematic and generalized.” The Commission also indicated that, more than 32 years having elapsed since the alleged disappearance of Rigoberto Tenorio Roca, his whereabouts had not been determined, the facts clarified,

2. *Procedure before the Commission.*—The procedure before the Commission was as follows:

to) *Petition.* —On November 13, 1998, Mrs. Cipriana Huamaní Anampa and the National Committee of Relatives of the Detained, Disappeared and Refugees (COFADER) in Lima presented the initial petition to the Commission. On February 1, 2007, the Association for Human Rights (APRODEH) and the International Federation for Human Rights (FIDH) became co-petitioners.

b) *Admissibility Report.* —On March 15, 2010, the Commission approved Admissibility Report No. 4/10, in which it concluded that petition 664-98 was admissible.<sup>2</sup>

c) *Background Report.* —On July 10, 2013, the Commission approved Merits Report No. 34/13, in accordance with Article 50 of the Convention (hereinafter also “merits report” or “report No. 34/13”), in which it reached a series of conclusions and made various recommendations to the State.

to. *conclusions.* —The Commission concluded that “the Peruvian State was [was] responsible for violations of the rights enshrined in Articles 3, 4, 5.1, 5.2, 7, 8.1, and 25.1 of the American Convention, in relation to Articles 1.1 and 2 of [the same to the detriment of Rigoberto Tenorio Roca].” It also affirmed that “the State was responsible for the violation of Articles I and III of the Inter-American Convention on Forced Disappearance of Persons [...] to the detriment of Rigoberto Tenorio Roca.” Regarding the next of kin of Mr. Tenorio Roca, the Commission held that “the State was [was] responsible for the violation of [the]

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<sup>1</sup> In accordance with the provisions of Article 35.1 of the Rules of Procedure of the Court, and since there is no dispute in this regard, The Court considers all the next of kin of Mr. Rigoberto Tenorio Roca indicated in the Merits Report No. 34/13 of the Inter-American Commission as alleged victims in this case, namely: Isidora Roca Gómez (mother), Juan Tenorio Roca (brother), Cipriana Huamaní Anampa (wife), Gladys Marleni, Gustavo Adolfo, Jorge Rigoberto, Walter Orlando, Maritza Roxana, Jaime, Ingrid Salomé and Edith Carolina, all of them with the last name Tenorio Huamaní (children).

<sup>2</sup> In said report, the Commission decided that the petition was admissible “in relation to Articles 3, 4, 5, 7, 8, and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument; and Articles I and III of the Inter-American Convention on Forced Disappearance of Persons”. Admissibility Report No. 4/10, Case of Rigoberto Tenorio Roca et al. v. Peru of March 15, 2010 (file of proceedings before the Commission, tome III, folios 1901 to 1912).

Article[s] 5.1, 8.1 and 25 of the American Convention in relation to Articles 1.1 and 2 of the same instrument.”

b. *Recommendations.* -Consequently, the Commission made a series of recommendations to the State:

1. [i]nvestigate fully, impartially, and effectively the whereabouts of Rigoberto Tenorio Roca. If it is established that the victim is not alive, adopt the necessary measures to deliver his remains to the next of kin [;]
2. [p]ecarry out the internal procedures related to the human rights violations declared in the [...] [merits] report and conduct the criminal proceedings for the crime of forced disappearance to the detriment of Rigoberto Tenorio Roca currently in progress, impartially, effectively and within a reasonable time, in order to fully clarify the facts, identify all those responsible and impose the corresponding sanctions[;]

[;]

4. [to] adapt domestic legislation to inter-American standards regarding the classification and prosecution of the crime of forced disappearance of persons, in the terms of paragraph 176 of the [...] report [on the merits;]
5. [a]dopt the necessary measures to prevent similar events from occurring in the future, in accordance with the duty to prevent and guarantee the human rights recognized in the American Convention and other applicable inter-American instruments. In particular, implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces[, and]
6. [p]art a public acknowledgment of international responsibility and make a public apology for the violations declared in the [...] [merits] report.

c. *Notification to the State.*-The merits report was notified to the State in a communication dated August 1, 2013, granting it a period of two months to report on compliance with the recommendations.

d) *Report on the recommendations of the Commission.*-The Commission reported that, with After the granting of four extensions, "the State ha[d] not complied with the recommendations [and] did not report on a specific proposal for comprehensive reparation for the family of Mr. Tenorio Roca." Likewise, the Commission maintained that "the investigations and the search for Mr. Tenorio Roca or his mortal remains do not reflect [ba]n significant advances." By virtue of the foregoing, the Commission decided to deny the fifth extension requested and send the case to the Court.

and) *Submission to the Court.* - On September 1, 2014, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and violations of human rights described in the report on the merits "given the need to obtain justice for the [alleged] victims." The Commission appointed Commissioner James L. Cavallaro and Executive Secretary Emilio Álvarez Icaza L. as its delegates before the Court, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, attorney of the Executive Secretariat, as legal advisors.

3. *Requests from the Inter-American Commission.* - Based on the foregoing, the Commission requested the Court to declare the international responsibility of the State for the same violations indicated in its merits report ( *suprapara. 2.ca*). Likewise, the Commission requested the Court to order the State certain measures of reparation, which are detailed and analyzed in Chapter VIII of this Judgment.

## II

### PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and the representatives.* -The representatives of the alleged victims were notified of the submission of the case.<sup>3</sup>(hereinafter also “the representatives”) on October 17, 2014, and to the State on October 20, 2014.
5. *Brief of requests, arguments and evidence.* -On January 5, 2015, the representatives submitted to the Court their pleadings, motions, and evidence brief (hereinafter “pleadings and motions brief”). In said brief they agreed with the arguments of the Commission and presented additional arguments regarding the alleged violation of Article 2 of the Convention. In addition, the alleged victims requested, through their representatives, access to the Victims Legal Assistance Fund of the Inter-American Court (hereinafter the “Court Assistance Fund” or the “Fund”). Finally, they asked the Court to order the State to adopt various measures of reparation and reimburse certain costs and expenses.
6. *answer brief.* - On March 9, 2015, the State submitted to the Court its preliminary objections brief, answer to the submission of the case by the Commission, and observations on the pleadings and motions brief (hereinafter “answer brief”). In said brief, the State filed two preliminary objections, one related to the alleged “lack of exhaustion of domestic remedies” and the other with the “lack of jurisdiction *ratione temporis* of the Inter-American Court regarding the Inter-American Convention on forced disappearance of persons”. The State appointed Mr. Luis Alberto Huerta Guerrero, Specialized Supranational Public Attorney of the Peruvian State, as Agent for this case.
7. *Admission to the Legal Assistance Fund.* -By Order of the President of the Court of March 24, 2015, the request filed by the alleged victims, through their representatives, to avail themselves of the Assistance Fund of the Court was declared admissible.<sup>4</sup>
8. *Observations to the preliminary exceptions.* - On April 15 and 20, 2015, the Inter-American Commission and the representatives presented, respectively, their observations on the preliminary objections filed by the State.
9. *Public audience.* -Through Resolution of December 15, 2015<sup>5</sup>, the President summoned the parties and the Inter-American Commission to a public hearing to receive their arguments and final oral observations on the preliminary objections and eventual merits, reparations and costs, as well as to receive the statement of the alleged victim Cipriana Huamani Anampa and the Provincial Prosecutor of the First Supraprovincial Criminal Prosecutor of the Public Ministry of Peru. The public hearing was held on February 22, 2016 during the 113th Regular Session of the Court, held at its headquarters<sup>6</sup>. During the aforementioned hearing, the State presented fourteen (14) photographs of different sites in Huanta, and the Court required the parties to

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<sup>3</sup> The Association for Human Rights (APRODEH) represents the alleged victims in this case.

<sup>4</sup> *cf. Case of Tenorio Roca et al. v. Peru.* Order of the President of the Inter-American Court of March 24, 2015. Available at: [http://www.corteidh.or.cr/docs/asuntos/tenorio\\_fv\\_15.pdf](http://www.corteidh.or.cr/docs/asuntos/tenorio_fv_15.pdf)

<sup>5</sup> *Cf. Case of Tenorio Roca et al. v. Peru.* Order of the President of the Inter-American Court of December 15, 2015. Available at: [http://www.corteidh.or.cr/docs/asuntos/tenorio\\_15\\_12\\_15.pdf](http://www.corteidh.or.cr/docs/asuntos/tenorio_15_12_15.pdf)

<sup>6</sup> The following appeared at this hearing: a) for the Inter-American Commission: Commissioner Enrique Gil Botero, and the lawyers of the Executive Secretariat, Silvia Serrano Guzmán and Jorge H. Meza Flores; b) by the representatives of the alleged victims: Gloria Cano Legua and Christian Henry Huaylinos Camacuari, Executive Director and lawyer of APRODEH, and c) by the State of Peru: Deputy Agent Iván Arturo Bazán Chacón and the Counselor of the Embassy of Peru in Costa Rica, Andrés Martín Garrido Sánchez.

present certain information. Additionally, the statements requested by *affidavit*.

10. *Final written arguments and observations.* -On March 22, 2016, the representatives and the State forwarded, respectively, their final written arguments, as well as certain annexes, and on that same date the Commission presented its final written observations.

eleven. *Observations of the parties and the Commission.* -The President granted a period of time to the parties and the Commission to present the observations they deemed pertinent to the annexes forwarded by the State and the representatives together with their final written arguments. On April 15, 2016, the State forwarded the requested observations. The representatives did not submit observations within the term granted for this purpose and the Commission, after an extension, indicated that it had no observations to present.

12. *Disbursements in application of the Assistance Fund.* -On April 5, 2016, the Secretariat, following the instructions of the President of the Court, forwarded information to the State on the disbursements made in application of the Fund for Legal Assistance for Victims in the instant case and, in accordance with the provisions of Article 5 of the Rules of Procedure of the Court on the Operation of said Fund, granted it a period of time to submit any observations it deemed pertinent. The State submitted observations within the period granted for that purpose.

13. *Deliberation of the present case.* -The Court began deliberating this judgment on June 21, 2016.

## II COMPETENCE

14. The Court is competent to hear this case, under the terms of Article 62(3) of the American Convention, because Peru has been a State Party to that instrument since July 28, 1978, and recognized the contentious jurisdiction of the Court on January 21, 1981.

## IV. PRELIMINARY EXCEPTIONS

15. The State presented in its answering brief, as preliminary objections, the following arguments: a) the alleged failure to exhaust domestic remedies, and b) the alleged lack of jurisdiction *ratione temporis* of the Inter-American Court regarding the Inter-American Convention on Forced Disappearance of Persons.

### ***A. Objection regarding the alleged failure to exhaust domestic remedies***

#### *A.1 Arguments of the State and observations of the Commission and the representatives*

16. The **State** filed the objection of failure to exhaust domestic remedies based on Article 46.1.a of the Convention and maintained that it had timely argued it in the admissibility stage of the proceeding before the Commission. He added that "the petitioner [had] not expressly relied [on] to any of the exceptions provided for in the Convention." It also indicated that the representatives of the alleged victims had not complied with the exhaustion of domestic remedies while there is an ongoing criminal investigation before the First National Criminal Court for the crime of forced disappearance to the detriment of Rigoberto Tenorio Roca and others, a process that would imply an opportunity at the domestic level "to claim the allegedly violated rights." He concluded that, when the petition was filed with the Commission,

domestic remedies had not been exhausted and it affirmed that none of the exceptions provided for in Article 46(2) of the Convention applied, for which reason it asked the Court to “declar[e] founded the [...] preliminary objection.”

17. The **Commission** indicated that the preliminary objection is untimely, since it was not presented during the admissibility stage, which is the appropriate procedural moment to do so. Regarding the three briefs indicated by the State, which were presented during the aforementioned stage, the Commission indicated that in them the State reported "on the investigations and criminal proceedings carried out at the domestic level before various instances, but no breach of the requirement of exhaustion of domestic remedies was alleged." It maintained that, as a consequence and as it understood in its admissibility report, a tacit withdrawal of this defense was established by the State. In the alternative, the Commission argued that the exceptions contemplated in Articles 46.2.a and 46.2.c of the Convention are applicable. It maintained that "the remedy to be exhausted in cases such as this is the investigation and criminal proceedings promoted ex officio by the State", in such a way that "the investigations and proceedings before the military criminal courts do not constitute an effective remedy." In addition, in the proceedings carried out before the ordinary criminal jurisdiction, there was a delay "of 25 years from the start of the events until the admissibility report[, which] constituted an unjustified delay."

18. Finally, the Commission affirmed that the analysis carried out in the admissibility report “was carried out in light of all the information available [for that] moment” but, even taking into account the argument that domestic remedies had not been exhausted when the petition was filed, “14 years had already elapsed since the beginning of [the] execution of the facts and the investigations had not been reopened in the ordinary jurisdiction, therefore [...] the exceptions applied in the admissibility report were already configured in any case at the time of filing the petition. In accordance with the foregoing, it asked the Court to declare the preliminary objection inadmissible because it considered it untimely and, secondarily, it required that it be declared inadmissible in substance,

19. The **representatives** They agreed with the Commission regarding the extemporaneity of the preliminary objection and with the fact that the Peruvian State presented three briefs before the Commission relating the ongoing investigations, but it did not allege non-compliance with the requirement of exhaustion of domestic remedies, which implies that it withdrew from making use of this exception. Additionally, they indicated that the State "is inconsistent with respect to the foundations of [its claim] in the proceedings before the Court" and that it did not refer to the specific remedies that the alleged victims should have exhausted, nor did it demonstrate that said remedies are adequate. Like the Commission, they maintained that there was "an unjustified delay in supporting the available remedies, which [...] exempts the petitioners from exhausting them." Finally, They agreed with what was alleged by the Commission in relation to the proceedings followed in the military criminal jurisdiction and the ordinary criminal jurisdiction, as well as with respect to the exceptions applied in the admissibility report, insofar as they had already been established at the time the petition was submitted. They added that at that time, amnesty laws Nos. 26479 and 26492 of 1995 were in force “which granted[n] amnesty to convicted, prosecuted, and investigated for crimes against human rights and prevented any investigation, as well as obliging the judiciary to apply it.” In accordance with the foregoing, the representatives asked the Court to “declare[d] the preliminary objection of lack of exhaustion of domestic remedies inadmissible as time-barred [and,] in substance,

## *A.2 Considerations of the Court*



20. Article 46.1.a) of the American Convention establishes that, in order to determine the admissibility of a petition or communication presented before the Inter-American Commission, in accordance with Articles 44 or 45 of the Convention, it is necessary that domestic remedies have been filed and exhausted, in accordance with the generally recognized principles of International Law.<sup>7</sup> The Court recalls that the rule of prior exhaustion of domestic remedies is conceived in the interest of the State, since it seeks to exempt it from answering before an international body for acts imputed to it, before having had the opportunity to remedy them with its own means.<sup>8</sup> This means that not only must these remedies exist formally, but they must also be adequate and effective, as a result of the exceptions contemplated in Article 46.2 of the Convention.<sup>9</sup>

21. Likewise, this Court has consistently held that an objection to the Court's exercise of jurisdiction based on the alleged failure to exhaust domestic remedies must be presented at the appropriate procedural moment, that is, during the admissibility proceeding before the Commission.<sup>10</sup>, after which the principle of procedural estoppel operates.<sup>11</sup> When alleging the lack of exhaustion of domestic remedies, it is the responsibility of the State to specify the remedies that have not yet been exhausted, and to demonstrate that they were available, adequate, suitable and effective.<sup>12</sup> In this regard, the Court reiterates that it is not the task of the Court, nor of the Commission, to identify *ex officio* what are the domestic remedies pending exhaustion, in such a way that it is not up to the international bodies to correct the lack of precision of the State's allegations.<sup>13</sup> From the foregoing it can be deduced that the invocation by the State of the existence of a remedy that has not been exhausted must not only be timely, but also clear, identifying the remedy in question and also how it, in the case, would be adequate and effective to protect the persons in the situation that has been denounced.<sup>14</sup>

22. The Court recalls that the first thing to determine, in relation to a preliminary objection of this nature, is whether the objection was presented at the appropriate procedural moment, an aspect that is in dispute in the instant case. The Court notes that the petition filed on November 12, 1998 was forwarded to the State on April 13, 2009, the date on which the Inter-American Commission granted it a period of two months for it to issue the corresponding observations regarding the admissibility stage of the petition. June 23

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<sup>7</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 3, 2016. Series C No. 311, para. twenty-one.

<sup>8</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Duque v. Colombia case. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of February 26, 2016. Series C No. 310, para. 35.

<sup>9</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, above, para. 63, and *Case of Duque v. Colombia, supra*, para. 35.

<sup>10</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 88, and *Case of Duque v. Colombia, supra*, para. 23.

<sup>11</sup> Cf. *Case of Granier et al. (Radio Caracas Television) v. Venezuela. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of June 22, 2015. Series C No. 293, para. 28, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2015. Series C No. 308, para. twenty-one.

<sup>12</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, paras. 88 and 91, and *Case of Duque v. Colombia, supra*, para. 23.

<sup>13</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 22.

<sup>14</sup> Cf. *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 282, para. 30, and *Case of the Garífuna Community of Punta Piedra and its Members v. Honduras. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of October 8, 2015. Series C No. 304, para. 32.

2009, the State forwarded the observations requested<sup>fifteen</sup>, in which he reported on the actions carried out for the acts allegedly committed against Mr. Rigoberto Tenorio Roca, describing the investigations initiated in the civil and military courts against the alleged perpetrators. Likewise, before the issuance of Admissibility Report No. 4/10, the State sent two new communications to the Commission. Thus, on September 14, 2009, he presented an account of the processes in the military and civilian jurisdictions and detailed procedures related to the extraction of samples from the exhumed skeletal remains and DNA tests. Subsequently,

23. The Court notes that, in the communications sent to the Commission during the admissibility stage, the State provided information on the proceedings in the military and ordinary courts aimed at clarifying the facts related to the alleged forced disappearance of Rigoberto Tenorio Roca, as well as on the process initiated after the issuance of the final report of the Truth and Reconciliation Commission. For the Court, although the existence of a criminal proceeding is derived from the terms expressed by the State in the aforementioned briefs, there is no evidence that a preliminary objection has been raised in this regard, which, as has been said, must be clearly formulated by the State. So, in previous cases,<sup>16</sup> Likewise, the Commission did not consider the response of the State in the present case as an allegation of failure to exhaust domestic remedies.<sup>17</sup>

24. Indeed, in this case the Court notes that at no time during the admissibility stage did the State invoke Article 46(1) of the Convention or indicate that the remedies had not been exhausted, or that the petition was inadmissible, or that the Commission did not have jurisdiction to hear the case. The State only limited itself to describing the state of the criminal proceedings. Therefore, the Court considers that the mere recount of procedural actions is not enough to have a preliminary objection contested, given that in the absence of a clear and timely argument by the State, it is inferred that it did not allege the lack of exhaustion of domestic remedies during the admissibility stage before the Commission. Such interpretation is consistent with what was decided by this Court in the case *Castillo Páez v. Peru*, when maintaining that: "the [State] was obliged to invoke expressly and in a timely manner the rule of non-exhaustion of domestic remedies to validly oppose the admissibility of the complaint before the Inter-American Commission"<sup>18</sup> and that, "[w]hile it is true that the briefs submitted by the [State] to the Commission during the processing of the matter indicated, among other information, the development of the habeas corpus proceedings and that of a criminal nature related to the disappearance of Mr. Ernesto Rafael Castillo Páez, however, he did not clearly oppose in the early stages of the proceedings before the Commission the exception of non-exhaustion of domestic remedies."<sup>19</sup> In this sense, the Court considers that the State has not opposed this means of defense in a timely manner.

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<sup>15</sup> Report No. 103-2009-JUS/PPES of June 10, 2009.

<sup>16</sup> *Cf. Case of Díaz Peña v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*, Judgment of June 26, 2012. Series C No. 244, paras. 118 and 122.

<sup>17</sup> *cf. Admissibility Report No. 4/10, Petition 664-98, Rigoberto Tenorio Roca et al., Peru, July 12, 2010, para. 39 (file of proceedings before the Commission, tome IV, folio 1908).*

<sup>18</sup> *Case of Castillo Páez v. Peru. Preliminary Exceptions*. Judgment of January 30, 1996. Series C No. 24, para. 41.

<sup>19</sup> *Case of Castillo Páez v. Peru. Preliminary Objections, supra*, para. 42.

25. By virtue of the foregoing, the Court concludes that the objection of non-exhaustion of domestic remedies alleged by the State is time-barred. Therefore, the preliminary objection filed by the State is dismissed.

### ***B. Objection regarding the alleged lack of jurisdiction *ratione temporis* of the Inter-American Court regarding the Inter-American Convention on Forced Disappearance of Persons***

#### *B.1 Arguments of the State and observations of the Commission and the representatives*

26. The **State** argued that the Court does not have jurisdiction to hear and rule on events that occurred prior to the time the State ratified the Inter-American Convention on Forced Disappearance of Persons. It maintained that this was the case in the instant case where the alleged facts "occurred as of July 7, 1984," that is, prior to the entry into force of the aforementioned instrument for the Peruvian State, which took place on March 15, 2002, and even prior to the adoption of the aforementioned instrument by the States on June 9, 1994. Therefore, it concluded that the Inter-American Convention on Forced Disappearance of Persons is not applicable in this case, and that "the events [...] occurred prior to the ratification of the aforementioned Convention by the State[,"

27. The **Commission** argued that the continued nature of forced disappearance implies that "its effects are prolonged over time as long as the destination or whereabouts of the victim is not established, for which reason the State finds itself in a situation of continuous violation of its international obligations." He recalled that, in the case *Osorio Rivera and others v. Peru*, the Court ruled on an identical objection opposed by the State, reaffirming its temporary jurisdiction to rule on various aspects of the aforementioned Convention. Consequently, it asked the Court to reiterate its consistent jurisprudence and declare the preliminary objection inadmissible.

28. The **representatives** agreed with what was stated by the Commission and, therefore, asked the Court to declare the preliminary objection unfounded.

#### *B.2 Considerations of the Court*

29. Peru deposited the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons on February 13, 2002, which entered into force for the State on March 15, 2002, in accordance with Article XX of said instrument.

30. In the case under review, the objections raised by the State question the competence *ratione temporis* of the Court regarding the Inter-American Convention on Forced Disappearance of Persons. It should be noted that in the case *Osorio Rivera and others*, Peru had already presented this preliminary objection with similar arguments and, in its pronouncement, the Court reiterated its competence to hear matters related to compliance with the commitments contracted by the States Parties to said instrument.<sup>twenty</sup>, based on articles XIII of the Inter-American Convention on Forced Disappearance of Persons and 62 of the American Convention on Human Rights.

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<sup>twenty</sup> *cf. Case of Osorio Rivera and Family v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, paras. 28 and 29.*

31. In addition, on that occasion, the Court held that, in accordance with the principle *pacta sunt servanda*, from the date it entered into force for the State<sup>21</sup>. The obligations of the treaty apply to Peru and, accordingly, it is applicable to those acts that constitute violations of a continuous or permanent nature, such as the forced disappearance of persons; that is to say, the treaty is applicable to those acts whose beginning of execution took place before the entry into force of the treaty and that persist even after that date, since they continue to be committed<sup>22</sup>, so that the principle of non-retroactivity is not infringed<sup>23</sup>. In the same way, the obligations contracted under the Inter-American Convention on the Forced Disappearance of Persons, in relation to the punishment of acts of torture, could be analyzed with respect to independent facts that in the course of a process could configure specific and autonomous violations of denial of justice.<sup>24</sup> To hold otherwise would be equivalent to depriving the treaty itself and the guarantee of protection it establishes of its useful effect, with negative consequences for the alleged victims in the exercise of their right of access to justice.<sup>25</sup>

32. Likewise, the Court emphasizes that in previous cases regarding Peru, it has already declared violations of this international treaty, despite the fact that the start of execution of the facts occurred prior to the date on which said treaty entered into force for the State.<sup>26</sup>

33. Based on the foregoing, the Court finds no elements that justify departing from its jurisprudence and, therefore, rejects the preliminary objection raised by the State, therefore it is competent to examine and rule on the alleged violations of the Inter-American Convention on Forced Disappearance of Persons, as of March 15, 2002, the date of its entry into force for Peru.

## V PROOF

34. Based on the provisions of Articles 46 to 51, 57 and 58 of the Rules of Procedure, the Court will examine the admissibility of the documentary evidence submitted by the parties on various procedural occasions, the statements, testimonies and expert opinions rendered by sworn statement before a notary public (*affidavit*) and in the public hearing, as well as the helpful evidence requested by the Court.

### ***A. Documentary, testimonial and expert evidence***

35. The Court received various documents presented as evidence by the State, the representatives, and the Inter-American Commission, attached to their main briefs and final arguments (*supra* paras. 1, 5, 6 and 10). In addition, the Court received the statements rendered before

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<sup>21</sup> Peru deposited the instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons on February 13, 2002, which entered into force for the State on March 15, 2002, in accordance with Article XX of said instrument.

<sup>22</sup> *Cf. Case of Osorio Rivera and Family v. Peru, supra*, para. 23.

<sup>23</sup> *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Exceptions*. Judgment of November 23, 2004. Series C No. 118, paras. 65 and 66, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 30.

<sup>24</sup> *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections, supra*, para. 84, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 33.

<sup>25</sup> *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 24, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 33.

<sup>26</sup> *Cf. Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 110; *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 103, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 32.

Public Notary (*affidavit*) by Gladys Marleni Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Gian Carlo Iannacone de La Flor and Luis Alberto Rueda Curimania. Similarly, it received the opinions of the experts Sofía Macher Batanero, Carlos Alberto Jibaja Zárata and Félix Rigoberto Reátegui Carrillo. Regarding the evidence provided in the public hearing, the Court received the statements of the alleged victim Cipriana Huamaní Anampa and the witness Edith Alicia Chamorro Bermúdez.

## **B. Admission of evidence**

### *B.1 Admission of documentary evidence*

36. In this case, as in others, the Court admits the probative value of those documents presented at the due procedural opportunity by the parties and the Commission that were not contested or challenged, and whose authenticity was not questioned.<sup>27</sup>

37. Regarding the documents indicated by means of electronic links, the Court notes that there was no opposition or observations from the parties or the Commission regarding the content and authenticity of such documents, therefore their inclusion in the body of evidence in this case is admitted.

38. Regarding the press releases forwarded by the Commission and the representatives, the Court has considered that they may be appreciated when they include notorious public facts or statements by State officials, or when they corroborate aspects related to the case.<sup>28</sup> Consequently, the Court decides to admit the documents that are complete or that, at least, make it possible to verify their source and date of publication.

39. However, with regard to the procedural opportunity for the presentation of documentary evidence, in accordance with Article 57.2 of the Regulation, it must generally be presented together with the briefs submitting the case, requests and arguments, or answers, as appropriate. The Court recalls that evidence submitted outside of the due procedural opportunities is not admissible, except in the exceptions established in the aforementioned Article 57.2 of the Rules of Procedure, namely, force majeure, serious impediment or if it were an event that occurred after the aforementioned procedural moments.<sup>29</sup>

40. In relation to the documents provided by the State and the representatives through their final written arguments, the Court notes that they respond to the helpful evidence requested during the public hearing, for which reason it is appropriate to admit them by virtue of Article 58.b) of the Rules of Procedure. In addition, with respect to the documents corresponding to the criminal proceeding, it is pertinent to note that their incorporation into the file is necessary in order to adequately assess the processes and investigations carried out by the State. Therefore, it is appropriate to incorporate the aforementioned documents into the body of evidence in this case. The observations made by the State will be taken into account when assessing said evidence.

41. Regarding the documents forwarded by the representatives on costs and expenses submitted with the final written arguments<sup>30</sup>, the Court will only consider those that refer to the

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<sup>27</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Background, above, para. 140, and *Case of Maldonado Ordoñez v. Guatemala*, supra, para. 27.

<sup>28</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Background, above, para. 146, and *Case of Velásquez Paiz et al. v. Guatemala*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 19, 2015. Series C No. 307, para. 32.

<sup>29</sup> Cf. *Case of Gudiel Álvarez et al. ("Military Newspaper") v. Guatemala*. Reparations and Costs Fund. Judgment of November 20, 2012. Series C No. 253, para. 40, and *Case of Velásquez Paiz et al. v. Guatemala*, supra, para. 31.

<sup>30</sup> Annex 1: Table of main APRODEH expenses and supporting documentation.

new costs and expenses that they have incurred during the proceedings before this Court, that is, those incurred after the presentation of the pleadings and motions brief. Therefore, it will not consider the invoices whose date is prior to the presentation of the pleadings and motions brief, since they should have been presented at the appropriate procedural moment.

### *B.2 Acceptance of statements and expert opinions*

42. The Court deems it pertinent to admit the statements and opinions rendered in a public hearing and through statements before a notary public, insofar as they conform to the purpose defined by the President in the Resolution that ordered them to be received.<sup>31</sup> and the purpose of this case.

43. The State indicated that the expert opinion rendered by Mrs. Macher Batanero exceeded the purpose established in the Order of the President and presented certain observations regarding its content. Therefore, what exceeds the object established by the President in a timely manner will not be taken into account.

### *C. Assessment of the evidence*

44. The State submitted observations regarding the probative value or weight of the expert opinions rendered by Messrs. Reátegui Carrillo and Jibaja Zárate.

45. Based on its consistent jurisprudence regarding the evidence and its assessment, the Court will examine and assess the documentary evidence submitted by the parties and the Commission that were incorporated by this Court, as well as the statements and expert opinions, when establishing the facts of the case and ruling on the merits. To this end, it is subject to the principles of sound criticism, within the corresponding regulatory framework, taking into account the entire body of evidence and what is alleged in the case.<sup>32</sup>

46. Finally, in accordance with the jurisprudence of this Court, the Court recalls that the statements made by the alleged victims cannot be evaluated in isolation but rather within the set of evidence in the proceeding, to the extent that they can provide more information on the alleged violations and their consequences.<sup>33</sup>

## **SAW FACTS**

### *A. Context regarding the internal armed conflict in Peru*

47. The Court recalls that, in the exercise of its contentious jurisdiction, it has been aware of various historical, social, and political contexts that have made it possible to situate the facts alleged as violations of the American Convention within the framework of the specific circumstances in which they occurred. In particular, the Court refers to the pronouncements made in various judgments<sup>3, 4</sup> about him

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<sup>31</sup> The objects of all these declarations are established in the Order of the President of the Court of December 15, 2015, first and fifth operative paragraphs, which can be consulted on the page *Web* of the Court at the following link: [http://www.corteidh.or.cr/docs/asuntos/tenorio\\_15\\_12\\_15.pdf](http://www.corteidh.or.cr/docs/asuntos/tenorio_15_12_15.pdf)

<sup>32</sup> *Cf. Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala. Background*, Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 31.

<sup>33</sup> *Cf. Case of Loayza Tamayo v. Peru. Background*, Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 31.

<sup>3, 4</sup> *Cf. Case of De La Cruz Flores v. Peru. Merits, Reparations and Costs*, Judgment of November 18, 2004. Series C No. 115; *Case of Gómez Palomino v. Peru. Merits, Reparations and Costs*, Judgment of November 22, 2005. Series C

context related to the armed conflict in Peru, in which the facts of this case are framed.

48. Said context was established mainly based on the Final Report issued on August 28, 2003 by the Truth and Reconciliation Commission of Peru (hereinafter "CVR"), created by the State in 2001 to "clarify the process, the facts and responsibilities of the terrorist violence and the violation of human rights produced from May 1980 to November 2000, attributable to both terrorist organizations and State agents, as well as proposing initiatives aimed at affirming peace and harmony among Peruvians"<sup>35</sup>.

49. According to the Final Report of the CVR, the State agents responsible for the counter-subversive fight used the forced disappearance of militants, collaborators, sympathizers or persons suspected of belonging to illegal armed groups, such as the Communist Party of Peru-Sendero Luminoso (hereinafter "Shining Path") and the Túpac Amaru Revolutionary Movement (hereinafter "MRTA"), as "one of the main mechanisms of the counter-subversive fight."<sup>36</sup>, becoming a "systematic or widespread practice"<sup>37</sup> depending on the period<sup>38</sup>, which had three specific purposes: (i) to obtain information from the subversives or suspects; (ii) eliminate the subversive or sympathizer ensuring impunity, and (iii) intimidate the population and force it to side with state authorities<sup>39</sup>. The department of Ayacucho recorded the highest number of cases of forced disappearance reported to the CVR, "which shows the massive nature of this practice in this [...] region."<sup>40</sup>.

50. The *modus operandi* followed by the perpetrators of the disappearance consisted of the selection of the victim, detention of the person, deposit in a place of detention, eventual transfer to a detention center, interrogation, torture, processing of the information obtained, decision of elimination, physical elimination and disappearance of the remains, as well as the use of the resources of the

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No. 136; *Case of Baldeón García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147; *Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs*, *supra*; *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162; *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167; *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202; *Case of Osorio Rivera and Family v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 26, 2013. Series C No. 274; *Case J v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Espinoza Gonzáles v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2014. Series C No. 289; *Case of Cruz Sánchez et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of April 17, 2015. Series C No. 292, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 299.

<sup>35</sup> *Case of Baldeón García v. Peru*, *supra*, para. 72.1, and *Case of Cruz Sánchez et al. v. Peru*, *supra*, para. 139.

<sup>36</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3303).

<sup>37</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3303).

<sup>38</sup> While 1983 and 1984 saw the largest number of cases of forced disappearances reported to the CVR during the armed conflict (40% of the total), between 1988 and 1993 this practice was systematically used by state agents as a counter-subversive mechanism. *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (evidence file, volume VII, annex 3 to the pleadings, motions and evidence brief, folios 3303 to 3309).

<sup>39</sup> *Cf. Case of Osorio Rivera and Family v. Peru*, *supra*, para. 54, and Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (evidence file, volume I, annex 7 to the merits report, folio 191).

<sup>40</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3304).

State. In all proceedings, the common denominator was the denial of the fact of the arrest and the failure to provide any information on what was happening with the detainee.<sup>41</sup> These stages did not necessarily occur consecutively.<sup>42</sup>

51. The widespread or systematic practice of forced disappearances was also favored by the widespread situation of impunity for serious human rights violations that existed at the time, fostered and tolerated by the absence of judicial guarantees and the ineffectiveness of judicial institutions to deal with systematic human rights violations.

<sup>43</sup>.

### ***B. The serious human rights violations in the province of Huanta, department of Ayacucho***

52. According to what was indicated by the CVR, as of October 1981 "recourse to states of emergency became general [in Peru], suspending for renewable periods of time [various] constitutional guarantees"<sup>44</sup>. According to the CVR, "[t]he numbers of victims and human rights violations in the departments affected [by the state of emergency] grew exponentially, this being the period with the highest number of victims of the conflict."<sup>Four. Five.</sup>

53. The expansion of Sendero Luminoso, especially in the rural areas of the central and northern provinces of the department of Ayacucho, led the government to decree a state of emergency in the department on October 12, 1981, and to suspend some constitutional guarantees in the provinces of Huamanga, Huanta, La Mar, Cangallo, and Víctor Fajardo.<sup>46</sup> Said decision did not prevent the continuity and intensification of the actions perpetrated by said group, for which reason at the end of December 1982 the then President conferred the political-military control of the Ayacucho emergency zone to the Armed Forces.<sup>47</sup>, giving rise to the "militarization of the conflict"<sup>48</sup>. On January 21, 1983, the Navy took over the provinces of Huanta and La Mar and established its countersubversive military base at the Municipal Stadium in the city of Huanta.<sup>49</sup>. Lieutenant Commander AP Álvaro Francisco Serapio Artaza Adrianzén, also known as "Truck Commander", served as the head of the Marine Infantry Detachment in the provinces of Huanta and La Mar in 1984<sup>fifty</sup>.

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<sup>41</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume I, annex 7 to the merits report, page 194).

<sup>42</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume I, annex 7 to the merits report, page 194).

<sup>43</sup> *Cf. Case of La Cantuta v. Peru, supra*, para. 92, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 58.

<sup>44</sup> *Case J v. Peru, supra*, para. 61, and *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 86.

<sup>Four. Five</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume I, *Chapter 1 Periods of violence* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3057).

<sup>46</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume I, *Chapter 2 Regional deployment* (evidence file, tome I, annex 12 to the merits report, folios 293 and 295), and the "Huanta Case" report of March 7, 2003 (evidence file, tome I, annex 15 to the merits report, folio 430).

<sup>47</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume I, *Chapter 1 Periods of violence* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3056).

<sup>48</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume I, *Chapter 1 Periods of violence* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3057).

<sup>49</sup> *cf.* Truth and Reconciliation Commission, Report "Caso Huanta" of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, folios 430 and 432).

<sup>fifty</sup> *cf.* Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, tome I, annex 15 to the merits report, folio 432).



54. As a consequence of the intensity of the actions of Sendero Luminoso and the indiscriminate response of the Marine Infantry "which started from the assumption that the entire population is suspected of being subversive"<sup>51</sup>, the province of Huanta became one of the spaces that concentrated the greatest intensity of political violence in the department of Ayacucho<sup>52</sup>. Said province "present[ed] the highest number of deaths of the entire department of Ayacucho and[,] therefore[,] of all the provinces of the country between 1980 and 1984."<sup>53</sup>.

55. The CVR Report narrates a series of abuses committed by members of the Navy in the province of Huanta, which include forced disappearances, extrajudicial executions, and torture.<sup>54</sup>. According to the "various testimonies of family members, witnesses to the arrests, people who were detained and later released, collaborators of the Marines during the arrests, and even a former Marine who was stationed in Huanta during 1984[,] at the Military Base located in the Huanta Municipal Stadium, there was a detention center where people detained on suspicion of terrorism were tortured."<sup>55</sup>.

56. The largest number of cases of forced disappearance reported to the CVR correspond to the years 1983 and 1984, which coincide with the period in which control of internal order was granted to the Navy in the province of Huanta. Specifically, the CVR documented in said province the arrest of 57 residents of different communities by police officers and the Navy Infantry between July and August 1984, who were reportedly taken to the Huanta Municipal Stadium, without their whereabouts being subsequently known.<sup>56</sup>, among which is Rigoberto Tenorio Roca.

57. In addition, on August 22, 1984, four graves were found at the site called Pucayacu, province of Acobamba, department of Huancavelica, as a result of information from an eyewitness to the burial of the corpses collected by a journalist.<sup>57</sup>. The next day, they dug up and found 50 corpses -49 male and one female- in an advanced state of putrefaction, "many of them had their hands tied and most showed bullet wounds to the head and other injuries caused by sharp weapons."<sup>58</sup>.

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<sup>51</sup> Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, page 432).

<sup>52</sup> *cf.* Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, tome I, annex 15 to the merits report, folio 430).

<sup>53</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume IV, *Chapter 1.1. The South Central region* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3232).

<sup>54</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Annex 4, *Cases and Victims Registered by the CVR*, Volumes XIII-XIV, *Cases of the department of Ayacucho*, Province of Huanta (evidence file, volume I, annex 13 to the merits report, folios 324, 339, 340, 343, 344, 348, 353, 354, 356, 357, 358, 366, 369, 373, 374, 376, 377, 382, 384, 391, 392, 395-398, 403-405, 409, 420, 421); "Huanta Case" report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, folios 433 to 439), and Final Report, 2003, Volume VII, *2.12 The forced disappearance of the journalist Jaime Ayala (1984)* (evidence file, volume I, annex 16.1 to the merits report, page 483).

<sup>55</sup> Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, page 433).

<sup>56</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VII, *2.11 Proven extrajudicial executions in the Pucayacu graves (1984)* (evidence file, volume I, annexes 16.1 and 17 to the merits report, folios 464, 471, 479 to 481 and 503).

<sup>57</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VII, *2.11 Proven extrajudicial executions in the Pucayacu graves (1984)* (evidence file, volume I, annex 16.1 to the merits report, page 465).

<sup>58</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume VII, *2.11 Proven extrajudicial executions in the Pucayacu graves (1984)* (Evidence file, volume I, annex 16.1 of the merits report, page 465), and Resolution issued by the Huanta Investigating Court on October 12, 1984 (evidence file, volume II, annex 34 of the merits report, page 565).

According to the CVR, "[t]he conditions in which the bodies of the victims were found did not correspond[ed] to an armed confrontation, but rather that they were extrajudicially executed."<sup>59</sup> For the CVR, these events could be attributed to the Navy stationed in Huanta<sup>60</sup>. The bodies found in Pucayacu were buried unidentified, except for one person<sup>61</sup>, in two graves in the General Cemetery of Huanta (*infrapara*. 105).

### ***C. The arrest of Rigoberto Tenorio Roca and his disappearance by members of the Peruvian Navy***

58. Rigoberto Tenorio Roca was born on January 4, 1944 in the peasant community of Incaraccay, in the district of Los Morochucos, province of Cangallo, department of Ayacucho. His parents were Daniel Mariano Tenorio Arango (deceased before the facts of this case) and Isidora Roca Gómez, and his brothers are called Juan and Eulogio Tenorio Roca<sup>62</sup>. On April 11, 1979, he married Cipriana Huamaní Anampa, with whom he had nine children: Gladys Marleni, Gustavo Adolfo, Jorge Rigoberto, Walter Orlando, Maritza Roxana, Jaime, Benjamín Franklin (died before the facts of this case), Ingrid Salomé and Edith Carolina, all of them with the last name Tenorio Huamaní.<sup>63</sup> Rigoberto Tenorio Roca was a former member of the Republican Guard<sup>64</sup> and Second Class Sub-Officer of the Army in retirement<sup>65</sup>. At the time of his arrest, he was working as a pre-military instruction teacher at the "González Vigil" College, located in the province of Huanta, and was 40 years old.<sup>66</sup>

59. According to the statements of the relatives of Rigoberto Tenorio Roca, his residence had been intervened on different occasions by members of the Navy, who had been monitoring him for months before arresting him.<sup>67</sup> For example, at the end of March or April of

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<sup>59</sup> Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, page 446).

<sup>60</sup> Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, page 448).

<sup>61</sup> Of the 50 bodies found, only that of Nemesio Fernández Lapa was identified by his relatives, who was arrested at his home in the province of Huanta on July 15, 1984 by Marines. *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VII, 2.11 *Proven extrajudicial executions in the Pucayacu graves (1984)* (evidence file, volume I, annexes 16.1 and 17 to the merits report, folios 481, 504 and 505).

<sup>62</sup> *cf.* Verification report No. 7701-2008-OD/JUNÍN of the Ombudsman of the Republic of Peru of May 29, 2008 (evidence file, volume I, annex 18 to the merits report, folios 508 to 511); Record of absence due to forced disappearance (file of proceedings before the Commission, tome IV, folio 1812), and Communication addressed to the President of the Joint Command of the Armed Forces by Juan Tenorio Roca on August 8, 1984 (evidence file, tome I, annex 20 to the merits report, folio 516).

<sup>63</sup> Verification report No. 7701-2008-OD/JUNÍN of the Ombudsman of the Republic of Peru of May 29, 2008 (evidence file, volume I, annex 18 to the merits report, folios 508 to 511), and marriage certificate dated April 11, 1979 issued by the District Council of San Juan Bautista, Province of Huamanga, Ayacucho (file evidence, volume I, annex 19 to the merits report, page 513).

<sup>64</sup> *cf.* Order to open the investigation issued by the Huanta Investigating Court on January 3, 1986 (evidence file, tome I, annex 21 to the merits report, folio 518).

<sup>65</sup> *cf.* Verification report No. 7701-2008-OD/JUNÍN of the Ombudsman of the Republic of Peru of May 29, 2008 (evidence file, tome I, annex 18 to the merits report, folio 508); Communication addressed to the President of the Joint Command of the Armed Forces by Juan Tenorio Roca on August 8, 1984 (evidence file, volume I, annex 20 to the merits report, page 516), and Order to open the investigation issued by the Huanta Investigating Court on January 3, 1986 (evidence file, volume I, annex 21 to the merits report, page 518).

<sup>66</sup> *cf.* Certificate of the Director of the "González Vigil" State College of July 9, 1984 (file before the Commission, tome IV, folio 1861); Verification report No. 7701-2008-OD/JUNÍN of the Ombudsman of the Republic of Peru of May 29, 2008 (evidence file, tome I, annex 18 to the merits report, folio 508), and Communication addressed to the Chairman of the Joint Command of the Armed Forces by Juan Tenorio Roca on August 8, 1984 (evidence file, tome I, annex 20 to the merits report, page 516).

<sup>67</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní

1984, Mrs. Cipriana Huamaní Anampa was detained by members of the Navy and later released.<sup>68</sup>

60. The Court finds it proven that on July 7, 1984, Rigoberto Tenorio Roca and his wife, Cipriana Huamaní Anampa, were traveling on a bus belonging to the Hidalgo transport company, which left the city of Huanta in the direction of the city of Ayacucho, capital of the department of the same name, located in the province of Huamanga. According to statements made by his spouse before the CVR, the purpose of the trip was to report to Military Infantry Base No. 51 "Los Cabitos" to find out when Mr. Tenorio Roca would start working as a military recruitment officer, since he had been selected in a public contest for that position.<sup>69</sup>

61. The Court has come to the conviction that, at approximately two in the afternoon, when the bus was near the Huayhuas annex, Iguain district, Huanta province, it was intercepted by a military patrol made up of thirty Marines and members of the Peruvian Investigative Police (PIP) who were traveling in two tanks and a Jeep.<sup>70</sup> Ten infants boarded the Hidalgo company bus and requested the identification of the passengers. Upon arriving at the place occupied by Rigoberto Tenorio Roca and verifying his documents, they made him get out of the vehicle because of his last name<sup>71</sup>. The infantrymen covered Mr. Tenorio Roca's face with his own jacket, made him enter an armored car, and took him away under arrest.<sup>72</sup> Both the Provincial Prosecutor of Huanta, Simón A. Palomino Vargas, and the Judge of First Instance

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Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 522 and 523); Testimonial statement given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, folios 543 to 544), and Testimonial statement No. 100979 given before the Truth and Reconciliation Commission by Juan Tenorio Roca on August 5, 2002 (evidence file, volume I, annex 23 to the merits report, page 533).

<sup>68</sup> *cf.* Testimonial statement No. 200577 given before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 522 to 525), and Testimonial statement given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2020. 02 (evidence file, volume I, annex 24 to the merits report, folios 543 to 544). See also, Truth and Reconciliation Commission, Final Report, 2003, Annex 4, *Cases and Victims Registered by the CVR*, Volumes XIII-XIV, *Cases of the department of Ayacucho*, Province of Huanta (evidence file, volume I, annex 13 to the merits report, folios 376 to 377).

<sup>69</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>70</sup> *cf.* Statement made before the Huanta Provincial Deputy Prosecutor's Office by Cipriana Huamaní Anampa on April 10, 1985 (evidence file, volume I, annex 26 to the merits report, folios 553 to 554); Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>71</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>72</sup> *cf.* Statement made before the Huanta Provincial Deputy Prosecutor's Office by Cipriana Huamaní Anampa on April 10, 1985 (evidence file, volume I, annex 26 to the merits report, folios 553 to 554); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

Provisional of the Province of Huanta, Juan Flores Rojas, would have witnessed the arrest and transfer of Mr. Tenorio Roca, since they were part of the military convoy<sup>73</sup>.

62. Mrs. Cipriana Huamaní Anampa continued on her way to the city of Ayacucho in order to report on what happened<sup>74</sup>. From Military Infantry Base No. 51 "Los Cabitos" communication was established with the Huanta Military Base, where they first stated that Mr. Tenorio Roca had been detained for an investigation, and later reported that he had been released after being identified.<sup>75</sup>

63. Mrs. Cipriana Huamaní Anampa reported having gone to the residence of the Provincial Prosecutor of Huanta, Simón A. Palomino Vargas, who reported the mistreatment to which Mr. Tenorio Roca was subjected<sup>76</sup>. The prosecutor would have informed the next of kin that he was not intervening because he was threatened by the Navy<sup>77</sup>.

64. Likewise, Mrs. Cipriana Huamaní Anampa and her children went to the Military Base of the Navy installed in the Municipal Stadium of Huanta, in search of news about the situation of her husband.<sup>78</sup> However, "the soldiers forced them to withdraw from the door, without explanation and with death threats."<sup>79</sup>.

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<sup>73</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, tome I, annex 24 to the merits report, folio 544); Testimonial statement No. 100979 rendered before the Truth and Reconciliation Commission by Juan Tenorio Roca on August 5, 2002 (evidence file, volume I, annex 23 to the merits report, folios 533 to 534), and Statement rendered by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>74</sup> *cf.* Statement made before the Huanta Provincial Deputy Prosecutor's Office by Cipriana Huamaní Anampa on April 10, 1985 (evidence file, volume I, annex 26 to the merits report, folios 553 to 554); Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>75</sup> *cf.* Statement made before the Huanta Provincial Deputy Prosecutor's Office by Cipriana Huamaní Anampa on April 10, 1985 (evidence file, volume I, annex 26 to the merits report, folios 553 to 554); Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 525 to 526); Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, page 544), and Statement given by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>76</sup> *cf.* Testimonial statement No. 200577 given before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 526 to 527), and Testimonial statement given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, volume I, annex 24 to the merits report, folios 544 to 545), and Statement made by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>77</sup> *cf.* Testimony given at a public hearing before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on April 11, 2002 (evidence file, tome I, annex 24 to the merits report, folios 544 to 545); Testimonial statement No. 100979 rendered before the Truth and Reconciliation Commission by Juan Tenorio Roca on August 5, 2002 (evidence file, tome I, annex 23 to the merits report, folios 533 to 534); Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4963 to 4970); Statement rendered before a notary public by Jorge Rigoberto Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4971 to 4975), and Statement made by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>78</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, volume I, annex 22 to the merits report, folios 526 to 527); Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4963 to 4970), and Statement rendered before a notary public by Jorge Rigoberto Tenorio

65. On July 10, 1984, the "Diario Extra" published an article describing the arrest of Rigoberto Tenorio Roca as follows:

Members of the Marine Corps detained Army Sub-Officer Rigoberto Tenorio for being linked to terrorism and he is being held incommunicado inside the Huanta Municipal Stadium where he is being interrogated.

Rigoberto Tenorio was taken from his home located on the first block of Jr. Miller and also worked as a Pre-Military Instruction teacher at the "Gonzales Vigil" school and the Police Forces indicated that Tenorio Roca has close ties to the Senderista leadership that operates in that area.

Until now, the Emergency Zone Command that operates in Ayacucho has not issued any communication about the capture of the Sub-Officer of the EP Rigoberto Tenorio<sup>80</sup>.

66. The Director of the "González Vigil" School in Huanta informed the Ayacucho Departmental Director of Education of the arrest of Mr. Rigoberto Tenorio Roca and indicated that they had taken steps through the Provincial Prosecutor's Office without receiving any information.<sup>81</sup> On July 18, 1984, the Departmental Director of Education of Ayacucho sent an official letter to the Political-Military Chief of the Emergency Sub-Zone of the Province of Huanta, informing about the arrest of Rigoberto Tenorio Roca on July 7, 1984, and requesting that said military authority "deign to verify the case [and] provide him with the necessary guarantees."<sup>82</sup>

67. The next of kin of Rigoberto Tenorio Roca requested information on his whereabouts both from the military authorities assigned to the department of Ayacucho and from the prosecutor's office, without obtaining results in this regard. Mrs. Cipriana Huamaní Anampa and Isidora Roca Gómez, wife and mother of Mr. Rigoberto Tenorio Roca, sent communications to the Huanta Provincial Prosecutor's Office and to the Ayacucho Political-Military Command<sup>83</sup>. Likewise, Mr. Juan Tenorio Roca, Rigoberto's brother, sent letters to the Ministry of the Interior<sup>84</sup>, the Second Military Region of

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Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4971 to 4975).

<sup>79</sup> Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, tome I, annex 22 to the merits report, folio 526).

<sup>80</sup> Press release that appeared in the "Diario Extra" on July 10, 1984, entitled "Army Sub-Officer Linked to Terrorism" (evidence file, tome II, annex 27 to the merits report, folio 556).

<sup>81</sup> *cf.* Note No. 230-CEGV-Hta-81 from the Director of the "González Vigil" School addressed to the Departmental Director of Education of Ayacucho on July 10, 1984 (evidence file, tome II, annex 31 to the merits report, folio 558); "Huanta Case" report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, page 444).

<sup>82</sup> Note from the Ayacucho Departmental Director of Education addressed to the Political-Military Chief of the Huanta Province Emergency Sub-Zone on July 18, 1984 (evidence file, tome II, annex 48 of the merits report, folio 872).

<sup>83</sup> *cf.* Communications addressed to the Chief of the Political-Military Command of the Second National Security Zone "E" by Cipriana Huamaní Anampa on July 10 and 23, and August 1, 1984 (evidence file, volume II, annex 44 to the merits report, folios 859 to 862), Briefs presented by Isidora Roca Gómez and Cipriana Huamaní Anampa to the Provincial Prosecutor of Huanta on 16, July 21 and 30 and August 27, 1984 (evidence file, tome II, annex 43 of the merits report, folios 853 to 857), and Brief presented by Isidora Roca Gómez to the Provincial Prosecutor of Huanta on July 18, 1984 (file before the Commission, tome III, folio 1208).

<sup>84</sup> *cf.* Brief presented before the then Minister of the Interior of Peru, Luis Percovich Roca, by Juan Tenorio Roca on August 8, 1984 (evidence file, tome II, annex 45 to the merits report, folio 864).

Army<sup>85</sup> and the President of the Joint Command of the Armed Forces<sup>86</sup>, and filed a criminal complaint with the National Prosecutor's Office<sup>87</sup>.

68. After five months without knowing the whereabouts of Mr. Tenorio Roca, Mrs. Cipriana Huamaní Anampa traveled to Lima with all her children<sup>88</sup>.

69. As a result of the complaints made by Mrs. Cipriana Huamaní Anampa, the Ad-Hoc Human Rights Prosecutor sent a communication to the General Secretariat of the Nation informing it of the actions taken in relation to the case of Mr. Rigoberto Tenorio Roca. In this regard, he referred to a series of communications sent, between January 1985 and March 1986, to the National Prosecutor, the Ayacucho Superior Prosecutor, the President of the National Penitentiary Institute, the Civil Guard Judicial Police Directorate of the Public Ministry, the Head of the Second Military Region and the President of the Joint Command of the Armed Forces, requesting information on the location and legal status of Rigoberto Tenorio Roca.<sup>89</sup>

70. In response, the Secretary of the Office of the Prosecutor of the Nation sent a communication to the Provincial Prosecutor of Huanta "in relation to the arrest and/or disappearance" of Rigoberto Tenorio Roca. The Assistant Provincial Prosecutor of Huanta, Simón A. Palomino Vargas, sent information informing the opening of "instruction against Lieutenant Commander Álvaro Artaza Adrianzén, with an arrest warrant" by the Investigating Court of that province and indicated that said case was in the investigation stage<sup>90</sup>. The Second Military Region indicated that "the information channel on the whereabouts and legal situation of [the] presumed disappeared persons would be provided by the Joint Command of the Armed Forces."<sup>91</sup> Subsequently, there is no information on the other specific measures eventually carried out by the entities notified by the Ad-Hoc Human Rights Prosecutor for the purpose of finding the whereabouts of the alleged victim or those adopted by the aforementioned Ad-Hoc Prosecutor after March 1986.

71. On May 29, 2008, the Ombudsman's Office issued Verification Report No. 7701-2008-OD/JUNÍN, through which it concluded that the available information "allow[s] to reasonably presume that Rigoberto Tenorio Roca is absent due to forced disappearance, as

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<sup>85</sup> *cf.* Briefs presented before the Chief of the Second Military Region by Juan Tenorio Roca on August 8 and September 11, 1984 (evidence file, volume II, annex 46 to the merits report, folios 866 and 867).

<sup>86</sup> *cf.* Briefs presented to the President of the Joint Command of the Armed Forces by Juan Tenorio Roca on August 8 and 24, 1984 (evidence file, tome II, annex 47 to the merits report, folios 869 and 870).

<sup>87</sup> *cf.* Complaint filed with the Office of the Prosecutor of the Nation on November 6, 1984 (file of the proceedings before the Commission, tome III, folios 1532 to 1535), and Brief presented to the Prosecutor of the Nation by Juan Tenorio Roca on March 20, 1985 (file with the Commission, tome IV, folios 1845 and 1846).

<sup>88</sup> *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, tome I, annex 22 to the merits report, folio 528), and Statement rendered before notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, tome X, *affidavits*, folios 4963 to 4970).

<sup>89</sup> *cf.* Complaint filed by Cipriana Huamaní Anampa before the Senior Prosecutor's Office on August 17, 1984 (file before the Commission, tome IV, folios 1821 to 1822), and Document issued by the Ayacucho Ad-Hoc Provincial Prosecutor's Office forwarded to the General Secretariat of the Nation's Prosecutor's Office, on March 14, 1986, Case No. 1270, file No. 2338 (file evidence, volume II, annex 49 to the merits report, folios 874 to 876).

<sup>90</sup> *cf.* Document issued by the Ayacucho Ad-Hoc Provincial Prosecutor's Office forwarded to the General Secretariat of the National Prosecutor's Office on March 14, 1986 (evidence file, volume II, annex 49 to the merits report, folios 874 to 876).

<sup>91</sup> *cf.* Document issued by the Ayacucho Ad-Hoc Provincial Prosecutor's Office forwarded to the General Secretariat of the National Prosecutor's Office on March 14, 1986 (evidence file, volume II, annex 49 to the merits report, folios 874 to 876).

consequence of the violence that occurred between the years 1980 and 2000, since July 7, 1984."<sup>92</sup>, and the Certificate of Absence due to Forced Disappearance was issued<sup>93</sup>.

#### ***D. The judicial proceedings regarding the disappearance of Rigoberto Tenorio Roca***

72. In the present case, the following investigations and criminal proceedings have been brought to the attention of the Court: (i) the investigations initiated in the ordinary jurisdiction and in the military for the discovery of the Pucayacu graves, which are related to the present case given that the bodies correspond to residents of the province of Huanta who were detained by the Navy and, therefore, there would be a possibility that the remains of Mr. Tenorio Roca were among the 50 corpses found in the same; (ii) the investigations initiated in the ordinary jurisdiction and in the military for the disappearance of Rigoberto Tenorio Roca as a result of the complaint by his relatives; and (iii) the opening of an investigation in the ordinary jurisdiction for various crimes,

##### *D.1 The criminal proceedings followed in relation to the discovery of 50 bodies in the Pucayacu pits*

73. As established, on August 22, 1984, 50 bodies were found in four graves at the site known as Pucayacu (*supra* para. 57). As a result of this finding, two cases were initiated in parallel, one in the ordinary jurisdiction due to a complaint by the Provisional Prosecutor of the Tenth Provincial Prosecutor's Office of Lima (file No. 30-84) and another in the military on November 6, 1984.<sup>94</sup> (File No. 784-84).

74. With respect to file No. 30-84, on October 12, 1984, the Provisional Judge of First Instance of the Huanta Province (hereinafter "Huanta First Instance Judge"), Juan Flores Rojas, opened a criminal investigation with a provisional arrest warrant against Captain Álvaro Artaza Adrianzén, Political-Military Chief of the declared emergency zone of Huanta and La Mar, for the crime of "multiple qualified homicide." to the detriment of 50 unidentified people<sup>95</sup>. On November 7, 1984, the President of the Permanent War Council of the Navy of Lima raised the "competition dispute for declination, so that the aforementioned instruction passes to the military jurisdiction"<sup>96</sup>.

75. Upon learning of said dispute, on November 16, 1984, the Huanta First Instance Judge refrained from hearing the case and ordered that it be forwarded to the Permanent Court Martial of the Navy, "considering that it is a function crime subjected to

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<sup>92</sup> Verification report No. 7701-2008-OD/JUNÍN of the Ombudsman of the Republic of Peru of May 29, 2008 (evidence file, volume I, annex 18 to the merits report, folios 508 to 511).

<sup>93</sup> *cf.* Record No. 00808, Certificate of Absence due to Forced Disappearance of May 29, 2008 (file of proceedings before the Commission, tome IV, folio 1812).

<sup>94</sup> *cf.* Resolution issued by the Permanent Court Martial of the Navy on November 6, 1984 (evidence file, volume II, annex 35.1 to the merits report, folios 569 to 570).

<sup>95</sup> *cf.* Resolution issued by the Provisional Court of First Instance of the Province of Huanta on October 12, 1984 (evidence file, volume II, annex 34 of the merits report, folios 565 to 567).

<sup>96</sup> Decision issued by the Supreme Court of Justice on April 10, 1985 (evidence file, volume II, annex 32 to the merits report, page 560).

to military jurisdiction and the Code of Military Justice"<sup>97</sup>. Following the request of the Public Prosecutor's Office to refer the proceedings to the Superior Court, on January 10, 1985, the Correctional Court revoked the restraining order given that "there were no elements of judgment that d[emstrate] that the acts investigated had been committed in the act of service by the accused" and decided that the ruling on the jurisdictional dispute corresponded to the Supreme Court of Justice<sup>98</sup>.

76. On April 10, 1985, the Second Criminal Chamber of the Supreme Court of Justice resolved the jurisdictional dispute in favor of the military jurisdiction and ordered the referral of the proceedings of the ordinary jurisdiction to the Permanent Court Martial of the Navy, indicating "that the defendant Artaza Adrianzén, [...] was serving as Chief of the Marine Infantry Detachments in the declared emergency zone of Huanta and La Mar, in permanent service, for which reason the figure of the crime of function in the imputed act is governed by having been caused by cause or in the exercise of his position "<sup>99</sup>.

77. On February 13, 1985, Captain Álvaro Artaza Adrianzén rendered an instructive statement before the Navy Substitute Investigating Judge, rejecting the facts with which he was accused.<sup>100</sup> Subsequently, on February 20, 1985, a number of members of the Navy attached to the Huanta Emergency Zone on the date of the events in this case, gave testimonial statements before the aforementioned military Investigating Judge, agreeing to deny the facts imputed to Captain Álvaro Artaza Adrianzén.<sup>101</sup> On February 22, 1985, the Substitute Investigating Judge of the Navy in Ayacucho resolved the legal situation of the defendant Álvaro Artaza Adrianzén, decreeing his unconditional release, and in turn issued the respective warrant to the counterpart in Lima to notify him to the corresponding prosecutor.<sup>102</sup> In October 1985, some military and civilian troops made statements before the Substitute Investigating Court of the Navy in Ayacucho.<sup>103</sup>

78. On December 27, 1985, the Auditor issued an opinion in which he determined that, "[o]f all the proceedings carried out both in the Common Jurisdiction and in the Military Jurisdiction, the criminal responsibility of the defendant has not been determined," therefore "he opin[ed] that it is appropriate [to] dismiss the [...] case brought against the defendant Álvaro Artaza Adrianzén [...], and the order that the War Council dictates to the Supreme Court [...] [and that] the declaration of absent prisoner decreed by the Common Jurisdiction in the accumulated file must be annulled, and the lifting of the requisitions against the defendant shall be officiated."<sup>104</sup>.

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<sup>97</sup> *cf.* Decision issued by the Supreme Court of Justice on April 10, 1985 (evidence file, volume II, annex 32 to the merits report, page 560).

<sup>98</sup> *cf.* Resolution issued by the Supreme Court of Justice on April 10, 1985 (evidence file, tome II, annex 32 to the merits report, folio 561).

<sup>99</sup> Decision issued by the Supreme Court of Justice on April 10, 1985 (evidence file, tome II, annex 32 to the merits report, folios 560 and 562).

<sup>100</sup> *cf.* Instructional statement rendered before the Substitute Investigating Judge of the Navy in Lima by Álvaro Artaza Adrianzén on February 13, 1985 (evidence file, volume II, annex 37 to the merits report, folios 801 to 807).

<sup>101</sup> *cf.* Testimonial statements of José Vidal Sánchez, Luis Gómez García, Pascual Barco Colchado, Florentino Morales Chávez, Alberto Rivero Valdeavellano and Augusto Gavilondo García del Barco, all of them rendered before the Navy Investigating Judge on February 20, 1985 (evidence file, tome II, annex 35 to the merits report, folios 638 to 653).

<sup>102</sup> *cf.* Resolution issued by the Substitute Navy Judge in Ayacucho on February 22, 1985 (evidence file, volume II, annex 35 to the merits report, folios 654 4 655); Letter rogatory No. 04-85 issued by the Navy Substitute Investigating Judge in Ayacucho on February 22, 1985 (evidence file, tome II, annex 38 to the merits report, folio 809).

<sup>103</sup> *cf.* Testimonial statements of Félix Francisco Febres Alcalde on October 15, 1985, Carlos Alfredo Valdez Medina on October 16, 1985, Nicanor Teobaldo Arones Simón on October 24, 1985, Moisés Enrique Pauyac Rojas on October 31, 1985 (evidence file, volume II, annex 35 to the merits report, folios 739 to 745, and 747).

<sup>104</sup> Audit Report No. 156 issued by the Ship Captain Auditor on December 27, 1985 (file of



On January 21, 1986, the Navy's Permanent Court Martial, in accordance with the opinion of the auditor, issued an order by means of which it resolved the dismissal in the hearing of said case, raised the file in consultation with the Supreme Council of Military Justice, annulled the declaration of absent prisoner and lifted the arrest warrant against Mr. Álvaro Artaza Adrianzén<sup>105</sup>. On May 7, 1986, the Supreme Council of Military Justice confirmed the dismissal order.<sup>106</sup>

*D.2 The criminal proceedings followed in relation to the forced disappearance of Rigoberto Tenorio Roca*

79. In relation to the forced disappearance of Rigoberto Tenorio Roca, an investigation was opened in the ordinary jurisdiction (file No. 1-86) and, when Captain Artaza Adrianzén was ordered to appear, the military jurisdiction decided to open another case (file No. 524-86).

80. By virtue of the complaint filed by Mr. Juan Tenorio Roca on November 6, 1984 before the National Prosecutor<sup>107</sup>, he asked the Provincial Prosecutor of Huanta to take action regarding the "supposed kidnapping of his brother Rigoberto Tenorio Roca [...] by members of the Marines stationed in the Municipal Stadium of Huanta" and, in particular, to ask the "Hidalgo" Transport Company for a list of passengers who were traveling with Mr. Tenorio Roca on July 7, 1984, "as well as to make the respective statements to each of them," and to investigate the publication of the "Extra Diary" of July 10, 1984<sup>108</sup>.

81. As regards the procedures carried out, the Hidalgo Transport Company forwarded to the Deputy Provincial Prosecutor of the Huanta Province the list of passengers who traveled on the said company's bus on July 5 and 7, 1984 and indicated that they only sold direct tickets to Lima and not to the city of Ayacucho.<sup>109</sup> Until March 29, 1985, none of the passengers had appeared before the Public Ministry to make a statement.<sup>110</sup> On April 10, 1985, the Huanta Provincial Prosecutor's Office received the statement of Cipriana Huamaní Anampa<sup>111</sup>.

82. On January 3, 1986, the Huanta Investigating Court issued an order to initiate an investigation against Álvaro Artaza Adrianzén for the crime of kidnapping to the detriment of Messrs. Rigoberto Tenorio Roca and Juan Medina Garay with a provisional arrest warrant<sup>112</sup>. In addition,

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evidence, volume II, annex 41 to the merits report, folios 838 to 846).

<sup>105</sup> *cf.* Resolution issued by the Court Martial of the Navy Judicial Zone on January 21, 1986 (evidence file, tome II, annex 40 to the merits report, folio 836).

<sup>106</sup> *cf.* Resolution issued by the Supreme Council of Military Justice on May 7, 1985 (evidence file, volume II, annex 35 to the merits report, page 755).

<sup>107</sup> *cf.* Complaint filed with the National Prosecutor's Office on November 6, 1984 (file of proceedings before the Commission, tome III, folios 1532 to 1535).

<sup>108</sup> *cf.* Official letter No. 1145-84-MP-FN, addressed to the Provincial Prosecutor of Huanta by the National Prosecutor, on November 8, 1984 (evidence file, tome II, annex 50 to the merits report, folio 878).

<sup>109</sup> *cf.* Note No. 018-85-MP-FPMH addressed to the Administrator of the Hidalgo SA Company by the Huanta Provincial Prosecutor's Office on January 25, 1985 (evidence file, volume II, annex 51 to the merits report, page 880), and Communication addressed to the Huanta Assistant Provincial Prosecutor by the Hidalgo SA Company Administrator on January 29, 1985 (evidence file, volume II, annex 52 to the merits report, page 882).

<sup>110</sup> *cf.* Note No. 106-85-MP-FMPH addressed to the Senior Prosecutor of the Ayacucho Judicial District by the Huanta Provincial Prosecutor's Office on March 29, 1985 (evidence file, tome II, annex 53 to the merits report, folios 886 to 887).

<sup>111</sup> *cf.* Testimonial statement given before the Huanta Provincial Prosecutor's Office by Cipriana Huamaní Anampa on April 10, 1985 (evidence file, volume I, annex 26 to the merits report, folios 553 and 554).

<sup>112</sup> *cf.* Order to open the investigation issued by the Huanta Investigating Court on January 3, 1986 (evidence file, volume I, annex 21 to the merits report, folios 518 to 520).

He ordered the notification to the Minister of the Navy and to the Head of the Joint Command of the Armed Forces, "so that they order the appearance of the accused to give his instructive statement."<sup>113</sup> In the same order, a series of procedures were requested, including the testimony of several people, including the brother and mother of Mr. Rigoberto Tenorio Roca and the passengers and driver of the bus in which he was traveling.<sup>114</sup>

83. Upon the request of the Investigating Court for the defendant Álvaro Artaza Adrianzén to render his statement on the facts accused against him, on February 25, 1986 the Chief of the General Staff of the Armed Forces informed the Huanta Investigating Judge that Mr. Supreme Court of April 10, 1985"<sup>115</sup>.

84. At the same time, on February 26, 1986, it was resolved to authorize the jurisdiction of the War Council to hear the complaint filed against Álvaro Artaza Adrianzén "for the alleged crime [of] kidnapping" of Rigoberto Tenorio Roca<sup>116</sup>. On March 18, 1985, the Substitute Investigating Judge of the Navy in Ayacucho addressed a letter to the Assistant Provincial Prosecutor of Huanta requesting information on the existence of a complaint against Captain Álvaro Artaza Adrianzén, for the crime of kidnapping to the detriment of Rigoberto Tenorio Roca. In the same letter, the military judicial authority stressed that, if so, "please send[...] a certified copy of the aforementioned complaint so that [that] office can carry out the pertinent investigations using the powers that the Military Jurisdiction and the Code of Military Justice grant [it]"<sup>117</sup>.

85. On April 9, 1986, the Huanta Investigating Court received two communications from Juan Tenorio Roca in which he became a civil party in the proceeding and requested that a passenger and the driver of the bus in which Rigoberto Tenorio Roca was traveling be summoned as witnesses, indicating that both "would give an account of the facts and circumstances surrounding the commission of the crime of kidnapping."<sup>118</sup>

86. Due to the non-appearance of Álvaro Artaza Adrianzén, the Investigating Judge of Huanta declared him an absentee prisoner on May 5, 1986 and appointed him a public defender<sup>119</sup>. On May 15, 1986, the Assistant Provincial Prosecutor of Huanta requested an extension of the period for investigation of the case because the ordinary term of the case had expired and there were still important procedures to be carried out, such as "the visual inspection procedures and reconstruction of the facts, in the places where the kidnappings took place," as well as the statement of the bus driver.<sup>120</sup>

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<sup>113</sup> Order to open the investigation issued by the Huanta Investigating Court on January 3, 1986 (evidence file, tome I, annex 21 to the merits report, folio 519).

<sup>114</sup> *cf.* Order to open the investigation issued by the Huanta Investigating Court on January 3, 1986 (evidence file, volume I, annex 21 to the merits report, page 520).

<sup>115</sup> Note No. 605-CCFFAA-PM-PE addressed to the Investigating Judge of the Province of Huanta on February 25, 1986 (file of proceedings before the Commission, tome III, folio 1260).

<sup>116</sup> *cf.* Note No. 231-CSJM-S/T addressed to the Court Martial of the Air Force Judicial Zone by the Secretary of the Superior Council of Military Justice on March 5, 1986 (evidence file, tome II, annex 62 to the merits report, folio 907).

<sup>117</sup> Note addressed to the Assistant Provincial Prosecutor of Huanta by the Substitute Investigating Judge of the Navy in Ayacucho on March 18, 1985 (evidence file, tome II, annex 54 to the merits report, folio 889).

<sup>118</sup> Communications from Juan Tenorio Roca received at the Huanta Investigating Court on April 9, 1986 (file of proceedings before the Commission, tome III, folios 1264 to 1266).

<sup>119</sup> *cf.* Order issued by the Huanta Investigating Court on May 5, 1986 (evidence file, volume II, annex 56 to the merits report, page 895).

<sup>120</sup> *cf.* Brief addressed to the Huanta Investigating Court by the Huanta Assistant Provincial Prosecutor on May 15, 1986 (evidence file, tome II, annex 57 to the merits report, folio 897).

87. On May 20, 1986, the Permanent Council of the Peruvian Air Force resolved to “[o]pen an investigation against [...] Álvaro Artaza Adrianzén for the crime of [a]buse of [a]uthority to the detriment of[...] Rigoberto Tenorio Roca and Juan Medina Garay”<sup>121</sup>. On June 30 of the same year, the Permanent Investigating Judge of the Peruvian Air Force issued an order to appear against Mr. Álvaro Artaza Adrianzén "so that he render his corresponding instructive statement" and requested that a series of proceedings be carried out.<sup>122</sup>

88. On June 26, 1986, the Chief of the General Staff of the Armed Forces sent an official letter to the Huanta Investigating Judge informing that Álvaro Artaza Adrianzén had been missing since February 2, 1986.<sup>123</sup>

89. On August 6, 1986, the Deputy Provincial Prosecutor of Huanta “Formul [or] accusation against Álvaro Artaza Adrianzén for the commission of the crime against individual freedom (kidnapping) in the detriment of Rigoberto Tenorio Roca and Juan Medina Garay” and requested that the penalty of 10 years in prison be imposed and the payment of a civil reparation in favor of the heirs. The Prosecutor indicated that the “kidnapping of [...] Rigoberto Tenorio Roca has been proven with the testimony of his wife who is an exceptional witness since she has witnessed the capture and other circumstances in which the kidnapping took place and saw that the kidnappers were Marines of the Peruvian Navy stationed in Huanta.” Likewise, he concluded that “the defendant Álvaro Artaza Adrianzén [...].<sup>124</sup>

90. On August 18, 1986, the Permanent Investigating Judge of the Peruvian Air Force in Lima asked the Investigating Judge of Huanta to refrain from hearing the case brought against the said defendant, and to refer the proceeding to said Investigating Court given that “both the aggrieved party and the defendant [were] Members of [the] Armed Forces and that the crime charged was committed in the act of duty (duty crime), therefore that [...] its knowledge and processing corresponds solely and exclusively to the Private Military Jurisdiction”<sup>125</sup>.

91. On September 5, 1986, the Director General of Navy Personnel sent an official letter to the Permanent Investigating Judge of the Air Force, indicating that it was not possible to process the appearance of the defendant Álvaro Artaza Adrianzén, because he “was considered in [s]ituation of Activity Outside the Tables, due to disappearance, in accordance with Supreme Resolution No. 0147-86-MA/DP dated [m]24 March 1986”<sup>126</sup>.

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<sup>121</sup> Resolution issued by the Permanent Council of the Peruvian Air Force on May 20, 1986 (file of proceedings before the Commission, tome III, folio 1174).

<sup>122</sup> *cf.* Resolution issued by the Permanent Council of the Peruvian Air Force on June 30, 1986 (file of proceedings before the Commission, tome III, folio 1176).

<sup>123</sup> *cf.* Note N° 1932-EMFA-PM-PE addressed to the Huanta Investigating Judge by the Chief of the General Staff of the Armed Forces on June 26, 1986 (evidence file, tome II, annex 58 to the merits report, folio 899); Decision No. 4 issued by the Sixth Civil Court of Lima on April 17, 1996 (evidence file, volume II, annex 83 to the merits report, page 950); Ministerial Resolution No. 079-89DE/MGP issued by the Ministry of Defense on February 17, 1989 (file of proceedings before the Commission, tome III, folio 1368).

<sup>124</sup> Accusation formulated by the Assistant Provincial Prosecutor of Huanta on August 6, 1986 (file of proceedings before the Commission, tome III, folio 1273 to 1274).

<sup>125</sup> Official letter IV-110-11-JILI-N° 0653 addressed to the Examining Judge of the Province of Huanta - Ayacucho by the Permanent Investigating Judge of the Peruvian Air Force in Lima on August 18, 1986 (evidence file, tome II, annex 66 to the merits report, folio 915).

<sup>126</sup> Note No. G.200-1816 addressed to the Permanent Investigating Judge of the Air Force by the General Director of Navy Personnel on September 5, 1986 (evidence file, tome II, annex 68 to the merits report, folio 920).

92. On September 25, 1986, the Huanta Investigating Court ordered the trial of the sole defendant, Álvaro Artaza Adrianzén, to be reserved until he was found and made available to the judicial authority.<sup>127</sup> On September 27, 1988, the Permanent Investigation Court of the Air Force declared Álvaro Artaza Adrianzén a defendant in absentia, appointing him an ex officio defense attorney.<sup>128</sup>

93. Finally, after the presentation of a series of requests for inhibition by the Permanent Investigating Judge of the Air Force<sup>129</sup>, the Judge of First Instance in Civil and Instruction of Huanta issued a resolution on January 19, 1990, refraining from continuing to hear the case and remitting the proceedings to the military jurisdiction.<sup>130</sup>, based on article 10 of Law No. 24150<sup>131</sup>.

94. Before the inhibitory resolution on September 30, 1991, the Permanent Investigating Judge of the Air Force added file No. 1-86 to file No. 524-86<sup>132</sup>. From that date, the military judge limited himself to officiating at the Civil Court of Lima, the Office of the Public Records of Lima and Callao, as well as other public entities, in order to determine if the accused Álvaro Artaza Adrianzén was missing.<sup>133</sup> On April 5, 1994, the National Directorate of Public and Civil Registries forwarded to the Permanent Court the "[c]ertificate [negative] of the Indices of Declaration of Heirs" in favor of Álvaro Artaza Adrianzén<sup>134</sup>.

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<sup>127</sup> *cf.*Resolution issued by the Actuary Witness of the Huanta Investigating Court on September 25, 1986 (evidence file, tome II, annex 60 to the merits report, folio 903).

<sup>128</sup> *cf.*Order issued by the Permanent Investigating Judge of the Peruvian Air Force on September 27, 1988 (evidence file, tome II, annex 70 to the merits report, folio 924).

<sup>129</sup> *cf.*Official letter V-110-11-JILI-N° 0249 addressed to the Investigating Judge of Huanta Province by the Permanent Investigating Judge of the FAP in Lima on February 23, 1989 (evidence file, tome II, annex 74 to the merits report, folio 933); Official letter V-110-11-JILI-N° 0335 addressed to the Investigating Judge of Huanta Province by the Permanent Investigating Judge of the FAP in Lima on March 23, 1989 (evidence file, tome II, annex 75 to the merits report, folio 935); Official letter V-110-11-JILI-N° 0675 addressed to the Investigating Judge of Huanta Province by the Permanent Investigating Judge of the FAP in Lima on May 22, 1989 (evidence file, volume II, annex 76 to the merits report, page 937); Official letter V-110-11-JILI-N° 779 addressed to the Investigating Judge of Huanta Province by the Permanent Investigating Judge of the FAP in Lima on June 22, 1989 (evidence file, tome II, annex 78 to the merits report, folio 939); Official letter V-110-11-JILI-N° 1200 addressed to the Investigating Judge of the Province of Huanta by the Permanent Investigating Judge of the FAP in Lima on November 20, 1989 (file of proceedings before the Commission, tome III, folio 1360); Official letter V-110-11-JILI-N° 1286 addressed to the Investigating Judge of Huanta Province by the Permanent Investigating Judge of the FAP in Lima on December 7, 1989 (evidence file, tome II, annex 79 to the merits report, page 941); Official letter V-110-11-JILI-N° 1279 addressed to the Investigating Judge of the Province of Huanta Ayacucho by the Permanent Investigating Judge of the FAP in Lima on December 27, 1989 (evidence file, tome II, annex 80 to the firm of merits, folio 943).

<sup>130</sup> *cf.*Decision issued by the Court of First Instance for Civil and Instruction of Huanta on January 19, 1990 (evidence file, tome II, annex 61 to the merits report, folio 905).

<sup>131</sup> Article 10 established that: "Members of the Armed Forces or Police Forces, as well as all those who are subject to the Code of Military Justice who are providing services in areas declared in a state of emergency, are subject to the application of said code. The infractions typified in the Code of Military Justice that they commit in the exercise of their functions are within the jurisdiction of the private military jurisdiction, except those that are not related to the service". Law No. 24150, *Establishes rules that must be complied with in states of emergency in which the armed forces assume internal control in all or part of the territory*, promulgated on June 6, 1985 (file of proceedings before the Commission, tome IV, folio 1808).

<sup>132</sup> *cf.*Decision issued by the Permanent Investigating Judge of the Peruvian Air Force on September 30, 1991 (evidence file, tome II, annex 81 to the merits report, folio 945).

<sup>133</sup> *cf.*Communication addressed to the President of the Permanent Court Martial of Aeronautics, by the Permanent Investigating Judge of the Armed Forces of Peru on October 12, 1994 (file of proceedings before the Commission, tome III, folios 1389 to 1390).

<sup>134</sup> *cf.*Certification issued by the National Directorate of Public and Civil Registries on April 5, 1994 (file of proceedings before the Commission, tome III, folios 1385 and 1387); Official letter No. 532-94-JUS/SG-OAD-DNRPC issued by the Documentary Coordination of the Documentary Administration Office on April 15, 1993 (file of proceedings before the Commission, tome III, folios 1386 and 1388).

95. On June 14, 1995, Congress approved Law No. 26479, through which amnesty was granted to military, police, or civilian personnel involved in all acts derived or originating from or as a consequence of the fight against terrorism and that may have been committed individually or in groups from May 1980 to the date of promulgation of the law.<sup>135</sup> Article 4 of said Law provided that the Judiciary, Common Jurisdiction, Military Jurisdiction and the Executive, should proceed to annul the police, judicial or criminal records registered against those amnestied by this Law, as well as to render ineffective any measure restricting freedom and, to release those amnestied who were undergoing arrest, detention, imprisonment or custodial sentence, leaving the administrative measures adopted subsisting.<sup>136</sup> Likewise, article 6 of the aforementioned Law provided for the final filing of all judicial processes, whether they were pending or with a sentence, and the prohibition to restart a new investigation on the facts that are the subject of such processes.<sup>137</sup>

96. On June 19, 1995, the Supreme Council of Military Justice, in application of Law No. 26479, granted the benefit of amnesty to Captain Álvaro Artaza Adrianzén, considering that the facts with which he was accused "constitute acts derived from the fight against terrorism, therefore it is included within the Amnesty Law", thus ordering the filing of the file.<sup>138</sup>

97. On June 28, 1995, Congress approved Law No. 26492, which interpreted the first article of Law No. 26479 in the sense that the general amnesty was mandatory for the jurisdictional bodies and covered "all events derived or originating from or as a consequence of the fight against terrorism from May 1980 to June 14, 1995, regardless of whether military personnel, police or civilian involved, whether or not they are denounced, investigated, prosecuted or convicted, leaving all judicial cases in process or in execution archived definitively"<sup>139</sup>.

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<sup>135</sup> *cf.* Law No. 26479 of June 14, 1995 that grants general amnesty to military, police and civilian personnel for various cases. Article 1 provides that "General amnesty is granted to Military, Police or Civil personnel, regardless of their Military or Police or Functional status, who are denounced, investigated, prosecuted, prosecuted or sentenced for common and military crimes in the Common or Private Military Jurisdictions, respectively, for all acts derived or originated on the occasion of or as a consequence of the fight against terrorism and that could have been committed individually or in a group from May 1980 to the date of the proclamation. enactment of this Law" (evidence file, volume III, annex 98 to the merits report, page 1105).

<sup>136</sup> *cf.* Law No. 26479, Article 4: "The Judiciary, Common Jurisdiction, Private Military Jurisdiction and the Executive, will proceed on the day, under responsibility, to annul the police, judicial or criminal records that may have been registered against those amnestied by this Law, as well as to render ineffective any measure restricting freedom that could affect them. They will also proceed to release those amnestied who are undergoing arrest, detention, imprisonment or a custodial sentence, leaving the administrative measures adopted subsisting" (evidence file, tome III, annex 98 to the merits report, folio 1105).

<sup>137</sup> *cf.* Law No. 26479, Article 6: "The facts or crimes included in this amnesty, as well as the definitive dismissals and acquittals, are not subject to investigation, inquiry or summary proceedings; remaining, all judicial cases, pending or in execution, definitively archived" (evidence file, tome III, annex 98 to the merits report, folio 1105).

<sup>138</sup> *cf.* Resolution issued by the Supreme Council of Military Justice on June 19, 1995 (evidence file, volume II, annex 82 to the merits report, page 947).

<sup>139</sup> *cf.* Law No. 26492, Article 3 "Article 1 of Law No. 26479 is interpreted in the sense that the general amnesty that is granted is of obligatory application by the Judicial Bodies and covers all acts derived or originated on the occasion of or as a consequence of the fight against terrorism committed individually or in groups from the month of May 1980 to June 14, 1995, regardless of whether the military personnel, police or civilian involved, whether or not it is denounced, investigated, subject to criminal proceedings or convicted; leaving all judicial cases in process or in execution archived definitively in accordance with article 6 of the aforementioned Law".

98. Finally, on April 17, 1996, the Sixth Civil Court of Lima declared the presumed death of Álvaro Artaza Adrianzén<sup>140</sup>. Said resolution was adopted as a result of a declaratory lawsuit filed on September 12, 1989 by the Public Prosecutor of the Ministry of Defense in charge of special matters related to the Peruvian Navy, in which he reported that the aforementioned soldier had been kidnapped by unknown persons on February 2, 1986 in Surco, Lima, without his whereabouts being known since then.<sup>141</sup>

*D.3 The investigations in the ordinary jurisdiction in relation to the Report "Case Huanta" of the CVR (file No. 109-2011)*

99. On March 7, 2003, the CVR handed over to the Public Ministry the "Huanta Case" Report, which included information regarding the murder of six Evangelical people in the Callqui community, the disappearance and murder of journalist Jaime Ayala Sulca, and the discovery of 50 bodies buried in the Pucayacu graves, "as a contribution to the clarification of serious crimes and human rights violations that occurred in the province of Huanta, department of Ayacucho in 1984"<sup>142</sup>. The CVR recommended that the Public Ministry file a criminal complaint for these events, as well as for the deprivation of liberty of 57 people, who are in a situation of disappeared. As a result, the Public Prosecutor's Office officially initiated a case for various crimes, including the forced disappearance of Rigoberto Tenorio Roca and 12 other detainees, for being one of the 57 persons detained and disappeared by Marines between July and August 1984 (*suprapara*. 56).

100. On September 1, 2006, after carrying out some preliminary investigations, the First Supraprovincial Criminal Prosecutor of Ayacucho with competence for crimes of terrorism and crimes against humanity, formalized a criminal complaint<sup>143</sup> against Adrián Huaman Centeno<sup>144</sup>, Alberto Rivero Valdeavellano<sup>145</sup>, Augusto Gabilondo García del Barco<sup>146</sup>, Luis Alberto Celis Checa and Jesús Jacinto Vilca Huincho, as alleged co-perpetrators of the crime against life, body and health in the form of murder, to the detriment of six identified persons. Likewise, it denounced the first three as co-perpetrators for the commission of the crime of murder, to the detriment of Nemesio Fernández Lapa and 48 unidentified people from the town of Huanta, as well as for the crime against humanity, in its modality of forced disappearance, to the detriment of Rigoberto Tenorio Roca and 12 other people.

101. On November 28, 2006, the Second Supra-provincial Criminal Court declared, among other things, that there was no place to open an investigation against those accused of the crime of forced disappearance, considering that it was a "generic and impersonalized complaint" since there was no "respective individualization of the acts considered punishable that were imputed to them and of the probative material on which they were base[d]."<sup>147</sup>

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<sup>140</sup> *cf.* Decision No. 4 issued by the Sixth Civil Court of Lima on April 17, 1996 (evidence file, volume II, annex 83 to the merits report, page 950).

<sup>141</sup> *cf.* Application filed before the Civil Court of First Instance of Lima, by the Public Prosecutor of the Ministry of Defense in charge of Special Matters related to the Peruvian Navy on September 12, 1989 (evidence file, tome II, annex 84 to the merits report, folios 952 and 953).

<sup>142</sup> Truth and Reconciliation Commission, "Huanta Case" Report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, folios 423 to 424).

<sup>143</sup> *cf.* Prosecutor complaint No. 06-2006-MP-1raFPSP-AYACUCHO formulated by the First Supraprovincial Criminal Prosecutor of Ayacucho on September 1, 2006 (evidence file, tome II, annex 85 to the merits report, folios 955 to 972).

<sup>144</sup> Head of the Military Political Command of the department of Ayacucho.

<sup>145</sup> Head of the Military Political Command of the provinces of Huanta and La Mar, located in the department of Ayacucho.

<sup>146</sup> Head of the Huanta Countersubversive Base, located in the department of Ayacucho.

<sup>147</sup> Order to open the investigation issued by the Second Supraprovincial Criminal Court on November 28, 2006

102. After the appeal filed by the Public Ministry and the lawyers of Cipriana Huamaní Anampa, on September 25, 2007<sup>148</sup> The National Criminal Chamber confirmed the resolution not to open the investigation regarding Alberto Rivero Valdeavellano<sup>149</sup>, but declared the decision appealed null and void with respect to the other two people (Adrián Huamán Centeno and Augusto Gabilondo García del Barco), since the criminal judge had omitted, prior to ruling, to require the Prosecutor to specify the positive actions that the accused agents would have deployed or what they were expected to do to avoid the result, without it being enough to indicate the position or military hierarchy that the defendants formerly held. Consequently, it was ordered to return the complaint to the representative of the Public Ministry so that he could proceed to correct said points.

103. In compliance with the provisions of the National Criminal Chamber, on February 19, 2008, the Ayacucho Supra-provincial Criminal Prosecutor decided to expand the preliminary investigation ordering several procedures, for which it requested the following: the referral by the Huanta Hospital of the autopsies performed on the bodies found in the Pucayacu grave, the medical-forensic opinion on the autopsies carried out to determine dates of death; the collection of judicial files in the military jurisdiction, the service records of Augusto Gabilondo García del Barco to the Personnel Directorate of the Navy, and the expansion of the statements of the relatives of two aggrieved parties<sup>150</sup>.

104. On September 10, 2008, the First Supraprovincial Criminal Prosecutor of Ayacucho extended the investigation period for 120 days and, later, extended the investigation stage for the same term, ordering additional procedures, such as the exhumation of the bodies found in Pucayacu buried in the Huanta cemetery (*infrapara*. 183), taking tokens *ante mortem* and the extraction of DNA samples from relatives<sup>151</sup>. On May 25, 2009, the Provincial Prosecutor of the First Supra-provincial Criminal Prosecutor's Office of Ayacucho reported the progress regarding the procedures ordered and, among other things, indicated that DNA samples had been extracted from a son and from the spouse of Rigoberto Tenorio Roca.<sup>152</sup>

105. Within the framework of this investigation, on March 2, 2009, one of the two graves was located in the Huanta General Cemetery, finding 37 bodies.<sup>153</sup> of the 50 corpses exhumed in Pucayacu (*suprapara*. 57). Of these 37 bodies, 12 have been identified and correspond to residents of Culluchaca, who, according to the accusation made, had been arrested and taken

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(Evidence file, volume VIII, annex 5 to the State's response, folios 3748 and 3752).

<sup>148</sup> *cf.* Resolution No. 826 issued by the National Criminal Chamber on September 25, 2007 (evidence file, volume VIII, annex 7 to the State's response, folios 3778 to 3784).

<sup>149</sup> Not enough evidence was found to link Rivero Valdeavellano to the events investigated. Textually: "[...] no document appears from this incident by which it can be validly inferred that the accused Rivero Valdeavellano during his stay in Huanta was the Chief of the Political-Military Command of Huanta y la Mar, much less that he operated from the Huanta Municipal Stadium, nor that it is inferred that due to effective control over his subordinates, he learned of the serious facts denounced." Resolution No. 826 issued by the National Criminal Chamber on September 25, 2007 (evidence file, tome VIII, annex 7 to the State's response, folio 3782).

<sup>150</sup> *cf.* Resolution No. 071-2008-1FPS-AY issued by the Ayacucho Supraprovincial Criminal Prosecutor's Office on February 19, 2008 (evidence file, volume II, annex 88 to the merits report, folios 1013 to 1014).

<sup>151</sup> *cf.* Report No. 34-2009-MP-FSPA-01 issued by the Provincial Prosecutor of the First Supraprovincial Criminal Prosecutor's Office of Ayacucho on April 30, 2009 (evidence file, tome II, annex 89 to the merits report, folios 1016 to 1017).

<sup>152</sup> *cf.* Report issued by the Provincial Prosecutor of the First Supraprovisional Criminal Prosecutor's Office of Ayacucho on May 25, 2009 (evidence file, tome II, annex 35 of the merits report, folios 765 to 766); Report issued by the Coordinator of the Superior National Criminal Prosecutor's Office and Supranational Criminal Prosecutors' Offices in October 2013 (evidence file, tome VIII, annex 31 to the State's response, folio 3901).

<sup>153</sup> *cf.* Report No. 34-2009-MP-FSPA-01 issued by the Provincial Prosecutor of the First Supraprovincial Criminal Prosecutor's Office of Ayacucho on April 30, 2009 (evidence file, tome II, annex 89 to the merits report, folios 1016 to 1017).

to the Municipal Stadium of Huanta, to later be extrajudicially executed, events that would have occurred between August 9 and 13, 1984<sup>154</sup>. Even though the corresponding DNA tests have been carried out to determine if any of those bodies correspond to Mr. Tenorio Roca, the results obtained so far have been negative.<sup>155</sup>

106. On January 14, 2011, the First Supraprovincial Criminal Prosecutor of Ayacucho filed an expansion of the criminal complaint aimed at correcting the observations issued by the National Criminal Chamber (*suprapara*. 102). Said Prosecutor's Office expanded its allegations related to the chain of command of the military forces that were operating in the province of Huanta, department of Ayacucho, on the date of the denounced facts, presented new evidence in order to prove the criminal responsibility of Adrián Huamán Centeno and Augusto Gabilondo García del Barco and requested that additional procedures be carried out.<sup>156</sup>

107. On May 2, 2011, the First Supra-provincial Criminal Court of Lima ordered the return of the complaint rectification document and its expansion so that the First Supra-provincial Prosecutor's Office of Ayacucho corrected a series of observations<sup>157</sup>. Pertinently, it understood that it should be confirmed that those charged with the crime of forced disappearance of persons had maintained their public positions at the time of the entry into force of Law 26926, which criminalized the crime of forced disappearance (and crimes against humanity in general) -that is, on February 22, 1998-, in accordance with the scope described by the Supreme Court of Justice of the Republic of Peru in its Plenary Agreement No. 9-2009. /CJ-116. This is because, although the permanent nature of this crime is recognized, according to the supreme body it would not be applicable to those who ceased their public positions prior to the entry into force of that modification of the Penal Code. Along these lines, it was understood that Rivero Valdeavellano had withdrawn prior to the entry into force of this reform,<sup>158</sup>.

108. On August 11, 2011, the First Supra-provincial Criminal Prosecutor of Ayacucho presented a new opinion in relation to the observations raised by the First Supra-provincial Criminal Court of Lima, in which it indicated that the interpretation made by said court in relation to the fact that the accused had the status of civil servant or public servant at the time the law that criminalized the crime of forced disappearance of persons entered into force

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<sup>154</sup> *cf.* Expanding order to open the investigation issued by the First Supraprovincial Criminal Court of Lima on December 16, 2011 (evidence file, tome XI, annex 5 to the final arguments of the State, folios 5109 to 5110).

<sup>155</sup> *cf.* Statement rendered by Edith Alicia Chamorro Bermúdez before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>156</sup> With regard to the investigation for the crime of forced disappearance to the detriment of Rigoberto Tenorio Roca and other persons who had been detained by Marines, the aforementioned Prosecutor's Office indicated that: "[b]etween the months of July to August of the year 1984, the incidence of detentions of citizens by members of the Peruvian Navy stationed in the Municipal Stadium of Huanta increased in the province of Huanta. [...] The detainees [...] were taken to the Huanta Municipal Stadium, as confirmed by the statement made by the Head of the Counter-guerrilla Base Augusto Gabilondo García del Barco [who] was in charge of military operations at the Huanta Base, who also, having information of terrorist activity within his area of responsibility, He ordered patrols to be carried out, a fact of which he informed his superiors (political-military chief and deputy chief) before carrying out the operation, during the operation and when it concluded [...] therefore it is once again concluded that the reconnaissance and combat patrols and their results were fully known and ordered by Alberto Rivero Valdeavellano - Political-Military Chief of the provinces of Huanta and La Mar, by Adrián Huamán Centeno - Political-Military Chief of the department of Ayacucho." Resolution to rectify the formalization of the complaint issued by the First Supraprovincial Criminal Prosecutor of Ayacucho on January 14, 2011 (evidence file, annex 91 to the merits report, folios 1033 to 1034). fact of which he informed his superiors (chief and deputy political-military chief) before carrying out the operation, during the operation and when it concluded [...] therefore, it is once again concluded that the conduct of reconnaissance and combat patrols and their results were fully known and ordered by Alberto Rivero Valdeavellano - Political-Military Chief of the provinces of Huanta and La Mar, by Adrián Huamán Centeno - Political-Military Chief of the department of Ayacucho." Resolution to rectify the formalization of the complaint issued by the First Supraprovincial Criminal Prosecutor of Ayacucho on January 14, 2011 (evidence file, annex 91 to the merits report, folios 1033 to 1034). fact of which he informed his superiors (chief and deputy political-military chief) before carrying out the operation, during the operation and when it concluded [...] therefore, it is once again concluded that the conduct of reconnaissance and combat patrols and their results were fully known and ordered by Alberto Rivero Valdeavellano - Political-Military Chief of the provinces of Huanta and La Mar, by Adrián Huamán Centeno - Political-Military Chief of the department of Ayacucho." Resolution to rectify the formalization of the complaint issued by the First Supraprovincial Criminal Prosecutor of Ayacucho on January 14, 2011 (evidence file, annex 91 to the merits report, folios 1033 to 1034). of combat and its results were fully known and ordered by Alberto Rivero Valdeavellano - Political-Military Chief of the provinces of Huanta and La Mar, by Adrián Huamán Centeno - Political-Military Chief of the department of Ayacucho". Resolution to rectify the formalization of the complaint issued by the First Supraprovincial Criminal Prosecutor of Ayacucho on January 14, 2011 (evidence file, annex 91 to the merits report, folios 1033 to 1034).

<sup>157</sup> *cf.* Resolution issued by the First Supraprovincial Criminal Court of Lima on May 2, 2011 (evidence file, volume VIII, annex 11 to the State's response, folios 3795 to 3802).

<sup>158</sup> *cf.* Resolution issued by the First Supraprovincial Criminal Court of Lima on May 2, 2011 (evidence file, volume VIII, annex 11 to the State's response, folios 3797, 3800 and 3801).



collided with the norms of international human rights law and with the doctrine established by the Inter-American Court in the Resolution on monitoring compliance issued in the case *gomez palomino*<sup>159</sup>. Consequently, he insisted on the formalization and subsequent rectification of the complaint for the crime of forced disappearance against the three accused.

109. On December 16, 2011, the First Supra-provincial Criminal Court of Lima issued an Expanded Order for the Opening of Investigation due to the extension of the complaint filed by the First Supra-provincial Criminal Prosecutor of Ayacucho, resolving to open investigation in ordinary proceedings against Adrián Huamán Centeno, Alberto Rivero Valdeavellano and Augusto Gabilondo García del Barco "for the crime against life, the body and health, in the form of murder" to the detriment of several people, as well as "for the crime against humanity in the form of Forced Disappearance", to the detriment of thirteen people, including Mr. Rigoberto Tenorio Roca. Likewise, it ordered various procedures to be carried out, including obtaining some statements related to Mr. Rigoberto Tenorio Roca, such as:<sup>160</sup>

110. On July 12, 2012, the First Supraprovincial Criminal Court of Lima decided to extend the term of criminal instruction for a term of 60 days, pounding exhorted to the Superior Court of Justice of Huamanga, in Ayacucho, so that he made various expert proceedings aimed at the identification of the bodies found in the Cemetery of Huanta<sup>161</sup>. On September 6, 2012, the First National Criminal Court<sup>162</sup> informed that the requested procedures had not yet been carried out<sup>163</sup>.

111. On September 25, 2012, the First National Criminal Court received an opinion issued by the First Supraprovincial Criminal Prosecutor's Office of Lima on September 21, 2012, in which it opined that "the State [...] should be declared as a Civilly Responsible Third Party in the [...] process", and that it should be declared "[c]omplex the [...] cause"<sup>164</sup>. On September 28, 2012, the First National Criminal Court declared admissible the requests of the First Supraprovincial Criminal Prosecutor of

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<sup>159</sup> *cf.* Opinion issued by the First Supraprovincial Criminal Prosecutor of Ayacucho on August 11, 2011 (evidence file, volume XI, annex 4 to the final arguments of the State, folios 5096 to 5103).

<sup>160</sup> *cf.* Expanding order to open the investigation issued by the First Supraprovincial Criminal Court of Lima on December 16, 2011 (evidence file, tome XI, annex 5 to the final arguments of the State, folios 5105 to 5152).

<sup>161</sup> Among these proceedings, the following was ordered: the ratification of a series of expert opinions on chemical toxicology, forensic ballistics, and necropsy protocols; receiving testimonial statements from dozens of people; the referral by the Sub-Management of the Molecular Biology and Genetics Laboratory of the Criminalistics Management of Lima of genetic profiles of the samples extracted from the skeletal remains; the taking of samples from the relatives of the victims in order to standardize them with the genetic profiles obtained from the exhumed remains, and the expert standardization of data *before death* and *post mortem* of the necropsy protocols carried out by the Ayacucho Forensic Investigation Laboratory in 2009. *cf.* Decision issued by the First Supraprovincial Criminal Court on July 12, 2012 (evidence file, volume II, annex 93 to the merits report, folios 1056 to 1067); Official letter No. 109-11-0-JRE-1°JPSP-2 issued by the First Supraprovincial Criminal Court of Lima on July 12, 2012 (evidence file, tome VIII, annex 13 to the State's response, folios 3817 to 3820); Decision issued by the First Supraprovincial Criminal Court of Lima on July 18, 2012 (evidence file, volume VIII, annex 14 to the State's response, folios 3822 to 3824).

<sup>162</sup> Pursuant to Article One of Administrative Resolution No. 150-2012-CE-PJ, published on August 4, 2012, the name of the Supraprovincial Criminal Courts that made up the National Criminal Chamber was changed to National Criminal Courts.

<sup>163</sup> *cf.* Official letter No. 109-2012-1-5001-JR-PE-01-LB sent by the First National Criminal Court on September 6, 2012 (evidence file, volume VIII, annex 94 of the merits report, page 1069).

<sup>164</sup> Opinion issued by the First Supraprovincial Criminal Prosecutor's Office on September 21, 2012 (evidence file, tome VIII, annex 16 to the State's response, folio 3833).

Lima and ordered to extend the period of instruction for four months. Likewise, it requested the Public Prosecutor's Office to rule on the proceedings still pending action.<sup>165</sup>

112. On November 13, 2012 and January 4, 2013, the Huanta Specialized Criminal Court referred various proceedings in relation to the criminal proceeding to the First National Criminal Court, returning the letter rogatory with the requested witness statements, although noting that "few people have appeared in this Office, in order to provide their witness statements, despite being duly notified, and the term granted with too much"<sup>166</sup>.

113. On May 31, 2013, the First National Criminal Court ordered various procedures to be carried out, among which were the receipt of testimonial statements, including that of Cipriana Huamaní Anampa<sup>167</sup>, which was practiced on June 20, 2013<sup>168</sup>. On July 1, 2013, the First National Criminal Court reported the results of the proceedings carried out in Huamanga from June 24 to 28, 2013, among which were the receipt of testimonies and the taking of DNA samples, as well as the ratification of a ballistics expert report.<sup>169</sup>

114. Between September and October 2013, various authorities<sup>170</sup> They reported that, although the period for extending the investigation had expired, various pieces of evidence had yet to be collected, so the case was still in the investigation stage.

115. On October 9, 2013, the First National Criminal Court sent letters to the Ombudsman's Office and the Ayacucho Bar Association, requesting the submission of documentation or information on complaints filed against members of the Navy, stationed in the province of Huanta (Ayacucho) in 1984, if any.<sup>171</sup> On November 12, 2013, said Court incorporated into the file the documentation sent by the Ombudsman<sup>172</sup>.

116. On October 9, 2013, the First National Criminal Court sent a letter to the Chief of the Peruvian Navy requesting him to send "information regarding the directives that governed the performance of the functions and organization of the members of the Peruvian [W]ar [M]arina stationed in the province of Huanta (Ayacucho) in 1984," as well as copies of two

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<sup>165</sup> *cf.* Decision issued by the First National Criminal Court of the Supreme Court of Justice of Lima on September 28, 2012 (evidence file, tome VIII, annex 17 to the State's response, folio 3841).

<sup>166</sup> Official letters No. 6795-2012-JEP-MBJHTA-CSJAY-PJ and No. 0041-2013-JEP-MBJH-CSAYA/PJ forwarded by the Huanta Specialized Criminal Court on November 13, 2012 and January 4, 2013 (evidence file, volume VIII, annexes 18 and 19 to the answer of the State, pages 3842 to 3843 and 3846).

<sup>167</sup> *cf.* Order issued by the First National Criminal Court on May 31, 2013 (evidence file, annex 20 to the State's response, folios 3848 to 3849).

<sup>168</sup> *cf.* Testimony made by Cipriana Huamaní Anampa before the First National Criminal Court on June 20, 2013 (evidence file, tome VIII, annex 21 to the State's response, folios 3858 to 3862).

<sup>169</sup> *cf.* Notes sent by the First National Criminal Court on July 1, 2013 (evidence file, volume VIII, annex 22 to the State's response, folios 3864 to 3869).

<sup>170</sup> *cf.* Note sent by the Principal Representative of the Judiciary before the National Human Rights Council to the Supranational Specialized Public Prosecutor on September 9, 2013 (evidence file, tome VIII, annex 29 to the State's response, folio 3886); Note sent by the First National Criminal Court on September 13, 2013 (evidence file, volume VIII, annex 30 to the State's response, folios 3889 to 3892); Report issued by the Coordinator of the National Superior Criminal Prosecutor and Supranational Criminal Prosecutors in October 2013 (evidence file, tome VIII, annex 31 to the State's response, folios 3895 to 3901).

<sup>171</sup> *cf.* Notes sent by the First National Criminal Court on October 9, 2013 (evidence file, volume VIII, annex 23 to the State's response, folios 3871 and 3872).

<sup>172</sup> *cf.* Order issued by the First National Criminal Court on November 12, 2013 (evidence file, volume VIII, annex 25 to the State's response, folio 3878).

specific directives<sup>173</sup>. On December 26, 2013, said Court indicated that, according to the information submitted by the Navy, that institution did not have directives governing the aforementioned performance.<sup>174</sup>.

117. On October 24, 2013 and January 3, 2014, the First National Criminal Court indicated that the extended investigation period had expired and decided to request the prosecutor's hearing from the Public Ministry in order for it to proceed in accordance with its powers.<sup>175</sup> On November 26, 2013, the First National Criminal Court sent a letter to the Sub-management of the Molecular Biology and Genetics Laboratory (Criminalistics Department) of the Institute of Legal Medicine of the Public Ministry requesting it to forward the results of the DNA samples taken from the victims' next of kin<sup>176</sup>.

118. On April 30, 2014, the First Supra-provincial Criminal Prosecutor's Office issued an opinion in which it maintained that all the steps requested and necessary to comply with the purpose of the investigation had not been carried out and requested an extension period of 60 days from the First National Criminal Court to carry out various actions.<sup>177</sup> On August 8, 2014, the First National Criminal Court extended the term and scheduled the requested proceedings.<sup>178</sup>.

119. On June 9, 2014, the First National Criminal Court resolved to "declare unfounded the *res judicata* exception deduced by the technical defense of the defendant Alberto Rivero Valdeavellano."<sup>179</sup> This decision was appealed by the defendant and his defense attorney on June 18, 2014.<sup>180</sup> On June 23, 2014, the aforementioned Court granted the appeal and submitted it to the National Criminal Chamber.<sup>181</sup> In this regard, according to the Prosecutor of the First Supraprovincial Prosecutor's Office, who testified before the Inter-American Court of Human Rights, said appeal had not yet been resolved.<sup>182</sup>.

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<sup>173</sup> *cf.* Notes sent by the First National Criminal Court on October 9, 2013 (evidence file, volume VIII, annex 23 to the State's response, folios 3873 and 3874).

<sup>174</sup> *cf.* Order issued by the First National Criminal Court on December 26, 2013 (evidence file, tome VIII, annex 27 to the State's response, folio 3882).

<sup>175</sup> *cf.* Orders issued by the First National Criminal Court on October 24, 2013 and January 3, 2014 (evidence file, volume VIII, annexes 24 and 28 to the State's response, folios 3876 and 3884).

<sup>176</sup> *cf.* Note sent by the First National Criminal Court on November 26, 2013 (merits file, volume VIII, annex 26 to the State's response, page 3880).

<sup>177</sup> Among them: ratifications of necropsy protocols; receipt of witness statements; use of a new DNA extraction method; notify the Laboratory of Molecular Biology and Genetics of the Public Ministry to report on various actions; extraction of blood samples from relatives and interviews with them by experts in forensic anthropology for the preparation of files *before death*, and receipt of the declaration of the civilly responsible third party. *cf.* Report issued by the First Supraprovincial Criminal Prosecutor's Office on April 30, 2014 (evidence file, volume VIII, annex 32 to the State's response, folios 3903 to 3933).

<sup>178</sup> *cf.* Note issued by the First National Criminal Court on August 8, 2014 (evidence file, volume VIII, annex 38 to the State's response, folios 3988 to 3994).

<sup>179</sup> Resolution issued by the First National Criminal Court on June 9, 2014 (merits file, tome VIII, annex 35 to the State's response, folio 3973).

<sup>180</sup> *cf.* Appeal filed by Mr. Alberto Rivero Valdeavellano and his defense attorney on June 18, 2014 (merits file, tome VIII, annex 36 to the State's response, folios 3977 to 3980).

<sup>181</sup> *cf.* Order issued by the First National Criminal Court on June 23, 2014 (merits file, annex 36 to the State's response, page 3976).

<sup>182</sup> *cf.* Statement rendered by Edith Alicia Chamorro Bermúdez before the Inter-American Court at the public hearing held on February 22, 2016.

120. On October 2, 2014, APRODEH and FIDH requested the First National Criminal Court to notify the General Commander of the Navy in order to inform him "about the structure and organization of the Navy Detachment, [...] the list of intelligence personnel who were stationed in the Huanta Navy Detachment [and] the identity of the personnel that made up the General Staff of the Navy Detachment" in year 1 984<sup>183</sup>.

121. On January 23, 2015, the First Supraprovincial Criminal Prosecutor's Office issued its final ruling informing the First National Criminal Court about the procedure carried out and the procedures carried out.<sup>184</sup> Among the evidence collected were the testimonial statements of Mr. Juan Tenorio Roca and Mrs. Cipriana Huamaní Anampa, carried out on June 19 and 20, 2013, respectively. With regard to the DNA comparisons with the corpses, on February 17, 2015, the Criminalistics Department of the Institute of Legal Medicine of the Public Ministry informed the National Head of the Institute of Legal Medicine that "[t]he DNA examination was carried out on the next of kin of Rigoberto Tenorio Roca and the result of the same is that there was no comparison, therefore he was not among those identified."<sup>185</sup> On May 21, 2015, the National Criminal Chamber, having received the final report submitted by the First National Criminal Court, submitted the proceedings to the Superior National Criminal Prosecutor's Office for the pronouncement of the law.<sup>186</sup>

122. On November 23, 2015, the First Superior National Criminal Prosecutor once again requested an exceptional extension of 60 days to the National Criminal Chamber in order to carry out various procedures, noting that most of them coincided with those requested in the extension of December 16, 2011 (*suprapara*. 109). Some of the steps requested relevant to this case were: the statement of the journalist who reported on the location of the Pucayacu graves; witness statement No. 038-2003-CVR-VIE on the practice of arrests in Huanta; the statements of Marines who worked between July and August 1984 in the city of Huanta and of various persons who were detained in the Huanta Municipal Stadium in 1984, as well as the statement of an eyewitness to the detention of Mr. Tenorio Roca. Regarding documentary evidence, he requested a certified copy of the "COMGEMAR" Directive, which regulated the participation of the Peruvian Navy, since those that had been sent were incomplete,<sup>187</sup>

123. In response to the foregoing, the National Criminal Chamber ordered on November 30, 2015 to extend the investigation period for 60 days, as well as to refer the case to the corresponding National Criminal Court so that the indicated procedures could be carried out.<sup>188</sup> For this reason, on January 6,

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<sup>183</sup> Communication presented in the First National Criminal Court on October 2, 2014 (evidence file, volume VII, annex 16 of the pleadings, motions and evidence brief, page 3619).

<sup>184</sup> *cf.* Opinion issued by the First Supraprovincial Criminal Prosecutor's Office on January 23, 2015 (evidence file, annex 39 to the State's response, folios 3996 to 4090).

<sup>185</sup> Official letter No. 571-2015-MP-FN-IML-JN/LAB.ADN sent by the Criminalistics Department of the Legal Medicine Institute of the Public Ministry on February 17, 2015 (evidence file, tome VIII, annex 47 to the State's response, folio 4132).

<sup>186</sup> *cf.* Decision issued by the National Criminal Chamber on May 21, 2015 (evidence file, tome XI, annex 6 to the final arguments of the State, folio 5154).

<sup>187</sup> *cf.* Opinion No. 150-2015-1°FSPN-MP/FN (evidence file, volume XI, annex 8 to the final arguments of the State, folios 5159 to 5164).

<sup>188</sup> *cf.* Decision issued by the National Criminal Chamber on November 30, 2015 (evidence file, volume XI, annex 9 to the final arguments of the State, folios 5166 to 5167).

In 2016, the First National Criminal Court ordered that the proceedings requested by the First National Superior Criminal Prosecutor (*suprapara*. 122)<sup>189</sup>.

124. According to the statement before the Inter-American Court of the Prosecutor of the First Supraprovincial Prosecutor's Office of Lima (*suprapara*. 35), based on the latest procedural actions at the domestic level regarding this case, until February 22, 2016 it had not been possible to take the statement of the eyewitness since it was learned that she had died. It also indicated that the statement of Prosecutor Simón A. Palomino Vargas had been obtained, who did not specifically recall the detention of Mr. Tenorio Roca due to the time elapsed. In addition, said Prosecutor stated that the directives were already complete, but the functional organization chart of the Huanta and La Mar emergency zone could not be sent because it was not "a stable base."<sup>190</sup>

## VII

### BACKGROUND

125. Having resolved the preliminary objections (*supra*Chapter IV), the Court goes on to consider and resolve the merits of the controversy. To this end, the Court will determine whether what happened to the alleged victim constitutes the alleged forced disappearance and, if so, will rule on the consequent international responsibility of the State. Next, it will address the alleged violations of the rights to personal liberty, personal integrity, life, and recognition of the legal personality of Rigoberto Tenorio Roca, in relation to the obligations of respect and guarantee established in the American Convention. Subsequently, the Court will analyze the alleged violations of judicial guarantees and judicial protection in the context of the domestic criminal proceedings initiated as a result of the facts of this case, as well as the duty to adopt provisions of domestic law. Finally, the alleged effects on the personal integrity of the next of kin will be addressed. In addition, the Court will determine what is appropriate with respect to the alleged violations of the Inter-American Convention on Forced Disappearance of Persons.

### VII-1

#### **RIGHTS TO PERSONAL LIBERTY, TO PERSONAL INTEGRITY, TO LIFE AND TO RECOGNITION OF THE LEGAL PERSONALITY, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND WITH ARTICLE I OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, IN INJURY OF RIGOBERTO TENORIO ROCA**

126. In this chapter, the Court will determine whether the proven facts constituted a forced disappearance attributable to the State. To do this, it will first establish the general framework from which it will carry out its analysis to later address the aspects that are related to the constituent elements of enforced disappearance (*infra* paras. 146 to 154). It will then rule on the alleged violations of the obligations to respect and guarantee the human rights of Mr. Tenorio Roca (*infraparas*. 155 to 164).

#### ***A. Arguments of the parties and of the Commission***

127. The **Commission** indicated that Rigoberto Tenorio Roca was detained on July 7, 1984 by members of the Navy and the Investigative Police, who took him to the

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<sup>189</sup> *cf.* Decision issued by the First National Criminal Court on January 6, 2016 (evidence file, volume XI, annex 10 to the final arguments of the State, folios 5169 to 5175).

<sup>190</sup> *cf.* Statement rendered by Edith Alicia Chamorro Bermúdez before the Inter-American Court at the public hearing held on February 22, 2016.

General of the Navy in the Municipal Stadium of Huanta. In the days following his arrest, his wife, Cipriana Huamaní Anampa, appeared in person to request information on her whereabouts. At first, the sailors denied the arrest, but later they reported that Mr. Tenorio Roca had been intervened for an investigation, without providing further information on his situation. For the Commission, the refusal to provide information on the situation of the alleged victim, in the context of the detention, and the fact that his whereabouts remain undetermined to date, constituted sufficient elements to conclude that what happened fell within the definition of forced disappearance of persons under the terms of Article II of the Inter-American Convention on Forced Disappearance of Persons.

128. The Commission indicated that forced disappearance is a complex violation that continues over time until the fate and whereabouts of the victim are known. In this sense, it concluded that Peru was in a situation of continuous violation of its international obligations, including Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, because to date the fate or whereabouts of Mr. Tenorio Roca have not been established. The Commission added that the international responsibility of the State was aggravated in the instant case, because it was part of a systematic pattern or practice applied or tolerated by its authorities.

129. Likewise, the Commission concluded that the Peruvian State failed to comply with the obligations to respect and guarantee the rights enshrined in Articles 3, 4.1, 5.1, 5.2 and 7 of the American Convention, in relation to Article 1.1 of the same instrument, and also violated Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of Rigoberto Tenorio Roca. Regarding the right to personal liberty, the Commission argued that in cases of forced disappearance of persons it was not necessary to carry out a detailed analysis of the guarantees established in Article 7 of the Convention, because when analyzing a case of forced disappearance, it should be taken into account that the deprivation of liberty was only the beginning of the configuration of a complex violation that lasted in time until the fate or whereabouts of the victim was known. Likewise, it indicated that it was proven that Rigoberto Tenorio Roca was detained by members of the Navy and the PIP and indicated that this constituted the first step in the forced disappearance of the alleged victim, which was enough to conclude that the detention was illegal, arbitrary, and disregarded each of the guarantees provided for in the aforementioned conventional provision.

130. Regarding the right to personal integrity, the Commission argued that, in addition to the physical and mental suffering inherent in a forced disappearance, Mr. Tenorio Roca was subjected to deliberate acts of violence during his transfer and detention at the Huanta Municipal Stadium, which would have constituted acts of torture, since they caused him intense physical and mental suffering in the terms of Article 5(2) of the Convention. The Commission concluded this based mainly on the context of the time; in the fact that according to the CVR's conclusions, the Municipal Stadium of Huanta, where Mr. Tenorio would have been transferred after his arrest, was used as a clandestine torture center, and that Mrs. Cipriana Huamaní Anampa affirmed that the Prosecutor Simón A. Palomino Vargas,

131. In relation to the right to life, the Commission argued that the practice of disappearances has frequently involved the execution of the detainees, in secret and without trial, followed by the concealment of the corpse in order to erase all material traces of the crime and to ensure absolute impunity, which meant a brutal violation of the right to life. Likewise, it indicated that the fact that a person is missing for a long time and in a context of violence is sufficient evidence to conclude that the person was deprived of his life.

132. In relation to the right to recognition of legal personality, the Commission argued that it was an essential and necessary requirement for the ownership and exercise of all rights, since without said recognition, the person could not enjoy the protection and guarantees that the law offered. Likewise, the Commission indicated that, by its very nature, the forced disappearance of persons sought the legal annulment of the individual in order to remove him from the protection that the law and justice granted him, and allowed the repressive apparatus to deprive people of their rights with impunity.

133. The **representatives** They agreed with the Commission in the sense that Mr. Rigoberto Tenorio Roca was detained by members of the Navy and that it was reasonable to think that he was transferred to the Huanta Municipal Stadium, in the context of a context of systematic and/or generalized forced disappearances, as was identified by the CVR in the department of Ayacucho during the year 1984.,to later be forcibly disappeared. Likewise, they highlighted that due to the elements of the context and the facts alleged in the case, the disappearance of Rigoberto Tenorio must be analyzed as an autonomous crime, that is, considering its multiple and continuous nature, as well as the principle of reversal of the burden of proof and the existing standards regarding the obligation of respect and guarantee binding on Peru. The representatives argued that forced disappearance implies a continuous violation of said rights because it subsists until the State makes reparation, that is, until it reports on the facts and the whereabouts of the victim, prosecutes and punishes the guilty parties, and makes reparation to the victim and her next of kin.

134. The representatives agreed with the violations declared by the Commission. Regarding the right to personal liberty, they indicated that it has been proven that Rigoberto Tenorio Roca was detained by State agents, but that said detention was carried out without justification, since despite the existence of a state of emergency for the province of Huanta and the suspension of some constitutional rights, it occurred while Mr. Tenorio Roca was traveling peacefully in a public transport vehicle, for work reasons, in broad daylight, in the presence of witnesses. The representatives argued that Mr. Tenorio Roca, after being detained, was transferred to the Huanta military base without having been brought before the competent judicial authority without delay, a situation that would violate Article 7.5 of the Convention. Similarly, they indicated that this would also constitute a violation of Article 7.6 of the Convention, since transfer to an illegal detention center would constitute the impossibility of imposing a prompt and effective remedy that would allow him to define the legality and circumstances of his detention. The representatives maintained that this situation facilitated the refusal to provide information to the next of kin of Mr. Tenorio Roca.

135. Regarding the right to personal integrity, the representatives indicated that Prosecutor Simón A. Palomino Vargas witnessed the ill-treatment that Mr. Tenorio Roca received during his transfer to the Huanta Municipal Stadium. They also alleged that the detainees from the area were taken to this place, where they were subjected to torture, according to the conclusions of the CVR. Therefore, they concluded that it was reasonable to presume that the alleged victim was subjected to said practices. Regarding the right to life, the representatives argued that under the circumstances in which the deprivation of liberty occurred, in the context of a generalized practice of forced disappearances by the State, and due to the inefficiency of the investigations into the facts and the lack of knowledge of the whereabouts of the alleged victim 32 years after his disappearance, it was presumed that Rigoberto Tenorio Roca was deprived of his life by agents of the Peruvian State. They also considered that, pursuant to the obligation to guarantee rights in Article 1(1) of the Convention, the State was under an obligation to provide information on the whereabouts of the alleged victim and to conduct an investigation into the facts.

136. In relation to the right to recognition of legal personality, the representatives considered that the actions of the State agents responsible for the arrest and subsequent

The disappearance of Mr. Tenorio Roca had the purpose of sowing fear, hiding the evidence of the crime and avoiding a possible sanction, thereby seeking to create a legal vacuum during the time of the disappearance of the alleged victim, through the refusal to acknowledge the detention. This situation made it impossible for him to exercise his rights and keeps his next of kin in total uncertainty about the whereabouts and legal situation of the alleged victim.

137. The **State** He stated that his presumed international responsibility was based on elements that were being examined in a criminal investigation opened at the national headquarters, as it was the ideal procedure to determine the presumed acts of forced disappearance. In this sense, he alleged that he had been carrying out the investigations at the domestic venue for the alleged forced disappearance of Mr. Tenorio Roca in an impartial and effective manner and that the only sources of the facts of the case were those that appeared in the respective file. In addition, it indicated that the competent bodies for the investigation of acts that could constitute a crime were the Public Ministry and the Judiciary, whose jurisdiction to determine whether the events occurred and to identify those allegedly responsible, and if applicable, to punish them, was at the national headquarters.

138. On the other hand, in relation to the right to recognition of legal personality, the State considered that it did not violate Article 3 of the American Convention because through Law No. 28413, published on December 11, 2004, the Special Registry of Absence due to forced disappearance (1980-2000) was created under the Office of the Ombudsman. The State indicated that the objective of said law was to regulate the legal situation of absence due to forced disappearance, whose judicial declaration had the effects of the judicial declaration of presumed death of the Civil Code. The State reported that, by virtue of said norm, on May 29, 2008, the next of kin of Mr. Tenorio Roca were delivered a "Certificate of Absence due to Forced Disappearance",

139. In addition, the State maintained that such evidence was intended to prevent the next of kin of Mr. Tenorio Roca from being in a legal uncertainty regarding his factual absence, acting solely as an administrative mechanism that recognized a true fact, such as the absence of a person in the context of internal violence, but without this establishing judicial responsibility for the facts or an acknowledgment of responsibility on the part of the State regarding the alleged forced disappearance reported. It added that the fact that the Ombudsman's Office had issued a Certificate of Absence and that it had led to the inclusion of Mr. Tenorio Roca and his next of kin in the Single Registry of Victims (RUV), did not mean that the alleged forced disappearance had been judicially proven.

## ***B. Considerations of the Court***

### *B.1 Forced disappearance as a multiple and permanent violation of human rights*

140. The Court has verified the international consolidation in the analysis of forced disappearance, which constitutes a serious violation of human rights, given the particular relevance of the transgressions that it entails and the nature of the rights violated, for which it implies a gross



abandonment of the essential principles on which the Inter-American System is based<sup>191</sup>, and its prohibition has reached the character of *jus cogens*<sup>192</sup>.

141. The Court has developed in its jurisprudence the permanent nature and the multi-offensive nature of forced disappearance<sup>193</sup>. The multi-offensive and permanent characterization of forced disappearance is clear not only from the very definition of Article III of the Inter-American Convention on Forced Disappearance of Persons<sup>194</sup>, of which the Peruvian State is part (*suprapara*. 29), the *travaux préparatoires*<sup>195</sup>, its preamble and regulations, but also other definitions contained in different international instruments<sup>196</sup> that, likewise, they indicate 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 acknowledge the detention and to reveal the fate or whereabouts of the person concerned<sup>197</sup>.

142. Likewise, in accordance with Article I, subparagraphs a) and b), of the Inter-American Convention on Forced Disappearance of Persons, the States Parties undertake not to practice or tolerate the forced disappearance of persons in any circumstance, and to punish those responsible for it within their jurisdiction. This is consistent with the obligation of the State to respect and guarantee rights, contained in Article 1.1 of the American Convention, which implies the duty of the States Parties to organize all the structures through which the exercise of public power is manifested, in such a way that they are capable of legally ensuring the free and full exercise of human rights.<sup>198</sup> As part of this obligation, the State has the legal duty to "[p]revent, reasonably, human rights violations, to seriously investigate, using the means at its disposal, the violations that have been committed within the scope of its jurisdiction in order to identify those responsible, to impose the pertinent sanctions and to ensure adequate reparation for the victim."<sup>199</sup>.

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<sup>191</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 158, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 112.

<sup>192</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153*, para. 84, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 112.

<sup>193</sup> Cf., *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Background, above*, paras. 155 to 157, and *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 161.

<sup>194</sup> Article II of the Inter-American Convention on Forced Disappearance of Persons establishes that "[s]e considered forced disappearance is the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to inform about the whereabouts of the person, thereby preventing the exercise of legal remedies and guarantees. s relevant procedural ". Article III of that instrument states, as pertinent, that: "[said] crime will be considered continuous or permanent until the fate or whereabouts of the victim is established."

<sup>195</sup> cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime "is permanent in that it is committed not instantly but permanently and lasts for as long as the person remains disappeared" (OEA/CP-CAJP, Report of the Chairman of the Working Group to Analyze the CIDFP Project, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, January 25, 1994, p. 10).

<sup>196</sup> cf. 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 against Enforced Disappearances of January 15, 1996, E/CN. 4/1996/38, para. 55, and article 2 of the International Convention for the Protection of All Persons against Enforced Disappearances.

<sup>197</sup> Cf. *Case of Gómez Palomino v. Peru, supra*, para. 97, and *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 161.

<sup>198</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 166, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 114.

<sup>199</sup> *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 174, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 114.

143. From all of the foregoing, it can be concluded that the acts constituting forced disappearance are permanent, and that their consequences lead to multiple offenses against the rights of persons recognized in the American Convention as long as the whereabouts of the victim or their remains are not found, for which reason the States have the correlative duty to investigate and eventually punish those responsible, in accordance with the obligations derived from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of people<sup>200</sup>.

144. Before proceeding to the substantive analysis of the controversy, the Court considers that it is important to remember that the international jurisdiction of human rights should not be confused with the criminal jurisdiction, since the States do not appear before the Court as subjects of criminal action.<sup>201</sup> Indeed, the jurisdiction of the Court focuses on the determination of violations of human rights by States, so their responsibility under the Convention or other applicable treaties should not be confused with the criminal responsibility of private individuals.<sup>202</sup> In this regard, it is pertinent to reiterate that in order to establish that there has been a violation of the rights recognized in the Convention, it is not necessary to prove the responsibility of the State beyond any reasonable doubt or to individually identify the agents to whom the violating acts are attributed.<sup>203</sup> but it is enough to demonstrate that actions or omissions have been verified that have allowed the perpetration of those violations or that there is an obligation of the State that has been breached by it.<sup>204</sup> in the terms set forth *supra*.

145. In view of the foregoing, it is pertinent to clarify that both the issuance of an internal judgment and the lack of a final judgment do not prevent the Court from ruling on the international responsibility of the State regarding the configuration of a forced disappearance, since criminal proceedings and decisions constitute a fact to be taken into account to assess State responsibility or its scope in a specific case, but they do not constitute *per se* factor to affirm or exempt the State from international responsibility. Therefore, the fact that a criminal investigation is in progress cannot be affirmed as a valid defense by the State to undermine its international responsibility when the failure to determine the truth of the facts and possible criminal responsibilities at the domestic level are a direct consequence of the State's failure to comply with its duty of due diligence or of a denial of justice due to unjustified delay, as will be analyzed later by this Court (*infra* Chapter VII-2) In short, it is the power of the Court to classify the facts of this case as a forced disappearance insofar as it constitutes a serious violation of human rights, and to establish the responsibility of the State vis-à-vis international obligations, regardless of the decisions adopted at the domestic level.

## *B.2 Classification of what happened to Mr. Rigoberto Tenorio Roca as forced disappearance*

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<sup>200</sup> Cf., *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Background, above*, paras. 155 to 157, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 161.

<sup>201</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 134, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 143.

<sup>202</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 118, and *Case of García Ibarra et al. v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs*, Judgment of November 17, 2015. Series C No. 306, para. 107.

<sup>203</sup> cf. *Case of the "White Panel" (Paniagua Morales et al.) v. Guatemala. Bottom, above*, para. 91, and *Case of García Ibarra et al. v. Ecuador, supra*, para. 107.

<sup>204</sup> cf. *Case of Velásquez Rodríguez v. Honduras. Bottom, above*, paras. 172 and 173, and *Case of García Ibarra et al. v. Ecuador, supra*, para. 107.

146. Next, the Court will analyze whether what happened to Mr. Rigoberto Tenorio Roca constitutes a forced disappearance. To this end, it will assess the different elements of evidence in the light of the aspects presented by the parties and the Commission to determine if the constitutive elements of forced disappearance are satisfied (*suprapara.* 141). The Court must apply an assessment of the evidence that takes into account the seriousness of the attribution of international responsibility to a State and that, without prejudice to this, is capable of creating conviction of the truth of the facts alleged.<sup>205</sup>

147. The deprivation of liberty of Mr. Tenorio Roca took place while he was traveling with his wife on a bus from Huanta to Ayacucho, due to the initiation of his position as a military recruitment officer (*supraparas.* 60 and 61). The Court notes that the arrest was carried out by members of the Navy and the PIP within the framework of a state of emergency in the province of Huanta and under the suspension of the right not to be detained without a court order or flagrante delicto. The Court considers that, although in this scenario the deprivation of liberty of Mr. Tenorio Roca could have proceeded in accordance with the domestic legal framework, it is clear from the facts of the case that the arrest was made after having verified his identity document and that it was not correlated with any investigation or judicial proceeding. In this way, the actions of the Marines can only be understood as a selective detention, which is consistent with the *modus operandi* of the time regarding enforced disappearances (*suprapara.* fifty).

148. It is important to highlight that the manner in which the deprivation of liberty takes for the purposes of characterizing a forced disappearance is indistinct.<sup>206</sup>, that is, any form of deprivation of liberty satisfies this first requirement. On this point, citing the Working Group on Forced and Involuntary Disappearances of Persons, the Court has clarified that forced disappearance can begin with an illegal detention or with an initially legal arrest or detention, that is to say that the protection of the victim against forced disappearance must be effective against deprivation of liberty, whatever the form that this may take, and not be limited to cases of illegal deprivation of liberty<sup>207</sup>.

149. Likewise, according to the information available, Mr. Rigoberto Tenorio Roca was not placed at the disposal of any authority, but rather was transferred to the Military Base located in the Municipal Stadium of Huanta, a place that functioned as a clandestine detention and torture center (*supraparas.* 55, 56 and 61).

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<sup>205</sup> *cf. Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 129, and *Case of Galindo Cárdenas et al. v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*, Judgment of October 2, 2015. Series C No. 301, para. 7.

<sup>206</sup> The 1992 Declaration on the Protection of All Persons from Enforced Disappearances establishes that enforced disappearances occur when: "persons are arrested, detained or transferred against their will, or are otherwise deprived of their liberty by government agents of any sector or level, by organized groups or by individuals acting on behalf of the Government or with its direct or indirect support, authorization or assent, and who then refuse to reveal their fate or whereabouts." whereabouts of these persons or to recognize that they are deprived of their liberty, thus removing them from the protection of the law". Additionally, Article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as: "the arrest, detention, kidnapping or any other form of deprivation of liberty carried out by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by the refusal to acknowledge said deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, removing them from the protection of the law." For its part, Article II of the Inter-American Convention on Forced Disappearance of Persons defines forced disappearance as: "the deprivation of liberty of one or more persons, whatever its form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State,

<sup>207</sup> *Cf. Case of Blanco Romero et al. v. Venezuela. Merits, Reparations and Costs*, Judgment of November 28, 2005. Series C No. 138, para. 105, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 125, citing Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, *General Comment on the definition of enforced disappearances*, A/HRC/7/2, January 10, 2008, para. 7.

150. Along these lines, this Court recalls that, when analyzing a case of forced disappearance, it must be taken into account that the deprivation of the individual's liberty should only be understood as the beginning of the configuration of a complex violation that continues in time until the fate and whereabouts of the victim are known. Based on all of the foregoing, the Court concludes, for the purposes of characterizing forced disappearance, that there was a deprivation of liberty carried out by state agents, from which the configuration of the disappearance began.

151. Regarding the element related to the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned, in the specific case, as has been proven in the facts, the next of kin insistently sought to know the situation and whereabouts of Mr. Tenorio Roca, without obtaining results or answers in this regard, for which they took the following steps:

- a) Mrs. Cipriana Huamaní Anampa tried to obtain information on the detention and transfer of Mr. Tenorio Roca to the Military Base located in the Municipal Stadium of Huanta, through radio communication from the "Los Cabitos" Barracks (*suprapara*. 62);
- b) Mrs. Cipriana Huamaní and her children went to the Military Base in search of Rigoberto Tenorio Roca, where the soldiers forced them to leave without giving them information about his situation or whereabouts (*suprapara*. 64);
- c) Mrs. Cipriana Huamaní went to the home of the Prosecutor Simón A. Palomino Vargas, who would have witnessed the arrest of her husband, to ask him to intercede (*supraparas*. 63);
- d) Mrs. Cipriana Huamaní and Mr. Tenorio Roca's mother, Mrs. Isidora Roca Gómez, filed complaints with the Huanta Provincial Prosecutor's Office and the Ayacucho Political-Military Command in July and August 1984, in order to locate and order the release of Mr. Tenorio Roca (*suprapara*. 67);
- e) Mr. Juan Tenorio Roca, Rigoberto's brother, sent letters to various authorities between the months of August and October 1984, including the Ministry of the Interior, the Second Military Region of the Army, the President of the Joint Command of the Armed Forces (*suprapara*. 67), and on November 6, 1984, he filed a criminal complaint with the National Prosecutor for committing the crime of kidnapping to the detriment of his brother (*suprapara*. 80), and
- f) The Director of the "González Vigil" School (Mr. Tenorio Roca's workplace) submitted a letter to the Departmental Director of Education of Ayacucho on July 10, 1984 informing about the arrest of Mr. Tenorio Roca and two other students, without knowing their current whereabouts due to the denial of information by the authorities. In turn, the Departmental Director of Education of Ayacucho sent an official letter to the Political-Military Chief of the Huanta Emergency Sub Zone informing about the detention and requesting that the case be verified and that the necessary guarantees be provided (*suprapara*. 66).

152. Likewise, as indicated by Mrs. Cipriana Huamaní Anampa, the authorities initially denied the detention of her husband, but at a second moment they acknowledged it, indicating that Mr. Tenorio Roca had been released (*suprapara*. 62). In this regard, although the State did not argue before this Court that Mr. Tenorio Roca was released, it follows from the facts of the case that the authorities in Huanta reported his release without giving further details about it. Based on the foregoing, the Court concludes that there was a refusal to acknowledge the detention and to reveal the fate or whereabouts of Mr. Tenorio Roca.

153. Likewise, the Court highlights the seriousness of the facts *sub judge*, which occurred in 1984 in the province of Huanta in the department of Ayacucho, which are part of the place and time period with the highest number of victims in the armed conflict in Peru (*supraparas*. 52 to 57). The TRC concluded that in said period "with the intervention of the Army and the Navy, the practice of forced disappearance increased by *aintensive way* and in *mass form* in the [three] departments declared in a state of emergency (Ayacucho, Huancavelica and

Apurímac)<sup>208</sup>. Certainly, the arrest and subsequent disappearance of Mr. Tenorio Roca was not an isolated event, but is inserted in a generalized context of forced disappearances carried out by the forces of order in the province of Huanta (*supraparas*. 52 to 57). In this sense, the Court considers that it has sufficient elements to come to the conviction that the arrest and the actions subsequent to it followed the *modus operandi* regarding the forced disappearances committed by state agents during the relevant period as part of the counter-subversive strategy (*suprapara*. fifty).

154. In conclusion, the Court finds it sufficiently proven that Mr. Tenorio Roca was detained by Marines of the Peruvian Navy and by the Peruvian Investigation Police on July 7, 1984, while he was traveling by bus to the city of Ayacucho, in the presence of his wife and various witnesses, after which he was taken to the Huanta Municipal Stadium, without the next of kin being informed of his situation or whereabouts. Consequently, the Navy authorities, who detained and transferred Mr. Tenorio Roca, were responsible for safeguarding his rights. More than 32 years after his arrest, his relatives do not know his whereabouts, despite the steps taken. Thus,

*B.3 Violations of Articles 7, 5.1, 5.2, 4.1 and 3 of the American Convention and Ia) of the Inter-American Convention on Forced Disappearance of Persons*

155. The Court recalls that a forced disappearance is configured by a plurality of conducts that, united by a single purpose, permanently violate, while they subsist, different legal rights protected by the Convention<sup>209</sup>. Therefore, the examination of a possible forced disappearance must be consistent with the complex violation of human rights that it entails and must not focus in an isolated, divided and fragmented manner only on detention, possible torture or the risk of losing one's life.<sup>210</sup> In this sense, its analysis must cover the totality of the set of facts that are presented to the consideration of the Tribunal.<sup>211</sup> and the context in which they occurred, in order to analyze their prolonged effects over time and comprehensively focus on their consequences<sup>212</sup>, considering the *corpus juris* both inter-American and international protection.

156. Regarding Article 7 of the American Convention, the Court notes that the initial arrest of Mr. Tenorio Roca was carried out by members of the Navy in the framework of a state of emergency and suspension of guarantees, including the right to personal liberty in which the Peruvian Navy assumed control of internal order in the province of Huanta. Notwithstanding whether or not the initial arrest and deprivation of liberty of Mr. Tenorio Roca was carried out in accordance with the powers of the law enforcement authorities during the state of emergency, said detention constituted the previous step for his disappearance.

157. For the Court, the detention and transfer of Mr. Tenorio Roca to the Military Base of the Navy, established in the Municipal Stadium of Huanta, deprived of liberty, without being made available to him

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<sup>208</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2 Enforced disappearances* (Evidence file, volume VII, annex 3 to the pleadings, motions, and evidence brief, page 3307).

<sup>209</sup> *Cf. Case of Radilla Pacheco v. Mexico, supra*, para. 138, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 166.

<sup>210</sup> *Cf. Case of Heliodoro Portugal v. Panama. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 166.

<sup>211</sup> *Cf. Case of Heliodoro Portugal v. Panama, supra*, para. 112, and *Case of the Peasant Community of Santa Bárbara v. Peru, supra*, para. 166.

<sup>212</sup> *Cf. Case of Goiburú et al. v. Paraguay, supra*, para. 85, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 116.

of the competent authority or that his entry to said Base was registered, evidently constituted an act of abuse of power that under no circumstances can be understood as the exercise of military activities to guarantee national security and maintain public order in the national territory, since the purpose was not to place him at the disposal of a judge or other competent official and present him before him, but to execute him or promote his disappearance. Therefore, the State is responsible for the violation of Article 7 of the Convention.

158. Regarding Article 5 of the American Convention, first of all, the Court considers that, by depriving Mr. Tenorio Roca of his liberty in a context of forced disappearances carried out in a general way between 1983 and 1984, the State placed him in a situation of special vulnerability and risk of suffering damage to his personal integrity and life. Likewise, the Court considers that it is evident that the victims of this practice see his personal integrity violated in all its dimensions.<sup>213</sup> In particular, according to the statement of Mrs. Cipriana Huamaní Anampa, Mr. Tenorio Roca was subjected to physical mistreatment at the time of his arrest and transfer in the military convoy. In addition, the Court considers that the physical and mental suffering inherent in a forced disappearance due to prolonged isolation, coercive solitary confinement, and the uncertainty of what would happen, generated in Mr. Tenorio Roca feelings of deep fear and anxiety. Likewise, this Court has considered that, after his arrest, Mr. Tenorio Roca was taken to the Military Base of the Navy established in the Municipal Stadium of Huanta, a place that functioned as a detention center where it has been established that torture was practiced on detainees (*supra* paras. 55). Based on the foregoing, the Court concludes that deliberate acts of violence were perpetrated against the victim, which constituted acts of torture. Therefore, the State is responsible for the violation of Article 5.1 and 5.2 of the American Convention.

159. Regarding Article 4 of the American Convention, the Court has considered that, due to the very nature of forced disappearance, the victim is in an aggravated situation of vulnerability, from which arises the risk of various rights being violated, including the right to life. In addition, the Court has established that forced disappearance has frequently included the execution of the detainees, in secret and without trial, followed by the concealment of the corpse in order to erase all material traces of the crime and seek impunity for those who committed it, which means a violation of the right to life, recognized in Article 4 of the Convention.<sup>214</sup> The Court emphasizes that, to date, more than 32 years after the disappearance began, the whereabouts of Mr. Tenorio Roca are unknown.

160. Finally, regarding the violation of Article 3 of the American Convention, the Court recalls that, since the case *Anzualdo Castro v. Peru*, it was considered that the practice of forced disappearance also violated Article 3 of the Convention, as it "seeks not only one of the most serious forms of abduction of a person from all areas of the legal system, but also denies their very existence and leaves them in a sort of limbo or situation of legal uncertainty before society, the State and even the international community."<sup>215</sup> Similarly, the Court has affirmed that "a forced disappearance may entail a specific violation [of article 3] because the consequence of the refusal to acknowledge the deprivation of liberty or whereabouts of the person is, together with the other elements of the disappearance, the 'subtraction

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<sup>213</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58, and *Case of the Peasant Community of Santa Bárbara v. Peru*, *supra*, para. 166.

<sup>214</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*. Background, above, para. 157, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 169.

<sup>215</sup> *Case of Anzualdo Castro v. Peru*, *supra*, paras. 90 and 91, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 170.

*of the protection of the law* the violation of the personal and legal security of the individual that directly prevents the recognition of legal personality.<sup>216</sup>

161. However, the Court notes that the State motivated the denial of this violation due to the existence of a domestic law that "regul[ed] the legal situation of absence due to forced disappearance," and granted a certificate of absence due to said phenomenon, which would be equivalent to a judicial declaration of presumed death. In this regard, the Court recognizes the legislative effort of the State to respond to the consequences of the phenomenon of the forced disappearance of numerous people in Peru, which makes it impossible for the disappeared to exercise their rights and obligations, which in turn generates effects on their relatives and third parties.<sup>217</sup>

162. However, the Court considers that said law is limited to providing an "administrative mechanism" to the next of kin of the disappeared person to "access the recognition of their rights", and does not judicially determine the forced disappearance or recognize any type of responsibility of the State. The State itself indicated that the purpose of said rule was to "provide the next of kin of the person absent due to forced disappearance and persons with a legitimate interest, the instruments to obtain recognition of their rights." The purpose of the certificate of forced disappearance was to prevent the next of kin of Mr. Tenorio Roca from finding themselves in a legal indeterminacy regarding his physical absence, acting solely as an administrative mechanism that recognized a true fact,

163. The Court considers that Mr. Tenorio Roca was placed by the State itself in a situation of legal indeterminacy, which impeded his possibility of being the holder or effectively exercising his rights in general, for which reason it entailed a violation of his right to recognition of legal personality. Said legal indeterminacy is maintained permanently until the whereabouts of the victim are established, or in any case her remains are found. In this sense, the Court concludes that the administrative mechanism was created as a legal fiction for the benefit of the next of kin and interested third parties in order to carry out actions that could not be possible due to the effects that said disappearance generates. Thus,

164. Based on the foregoing, the Court concludes that Peru incurred international responsibility for the forced disappearance of Rigoberto Tenorio Roca that began on July 7, 1984, without his whereabouts being known to date, for which reason he violated the rights recognized in Articles 7, 5.1, 5.2, 4.1, and 3 of the American Convention, in relation to Article 1.1 of the same and in relation to the provisions of Article Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rigoberto Tenorio Roca.

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<sup>216</sup> *Case of Anzualdo Castro v. Peru, supra*, paras. 90 and 91, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 170.

<sup>217</sup> *Cf. Case of Anzualdo Castro v. Peru, supra*, para. 100.

## VII-2

### **RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE THE RIGHTS AND THE DUTY TO ADOPT DOMESTIC LAW PROVISIONS, AS WELL AS THE OBLIGATIONS CONTAINED IN ARTICLES I AND III OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, TO THE DAMAGE OF RIGOBERTO TENORIO ROCA AND THEIR FAMILY**

165. In this chapter, the Court will address the alleged violations of Articles 8(1) and 25(1) of the American Convention and Articles Ib) and III of the Inter-American Convention on Forced Disappearance of Persons, in relation to Articles 1(1) and 2 of the American Convention. To this end, the Court will analyze the various processes initiated in order to determine if they have constituted, in their entirety, an effective remedy to ensure the rights of access to justice, to know the truth, and to reparation for the victim and her next of kin. In this sense, it is pertinent to remember that, from the proven facts, it is possible to distinguish three relevant investigations for the present case: the investigations initiated by the discovery of the Pucayacu graves; the investigations initiated into the disappearance of Rigoberto Tenorio Roca, and the opening of investigations based on the "Huanta Case" Report of the Truth and Reconciliation Commission. When analyzing the alleged violations, the Court finds it pertinent to recall the grounds and criteria regarding the obligation to investigate in cases of forced disappearance that have been developed in its jurisprudence, to then carry out the analysis in the following order: a) the obligation to investigate in cases of forced disappearance; b) the lack of due diligence in the proceedings opened in the ordinary jurisdiction, both for the discovery of the Pucayacu graves and for the disappearance of Rigoberto Tenorio Roca (files No. 30-84, 1-86 and 109-2011); c) the incompatibility of the military jurisdiction to judge human rights violations (files No. 784-84 and 524-86); d) the alleged failure to comply with the obligation to adopt provisions of domestic law by the amnesty laws; e) the alleged breach of the obligation to adopt provisions of domestic law due to the inadequate classification of the crime of forced disappearance; f) the reasonable term; g) the right to know the truth, and h) conclusion. 784-84 and 524-86); d) the alleged failure to comply with the obligation to adopt provisions of domestic law by the amnesty laws; e) the alleged breach of the obligation to adopt provisions of domestic law due to the inadequate classification of the crime of forced disappearance; f) the reasonable term; g) the right to know the truth, and h) conclusion. 784-84 and 524-86); d) the alleged failure to comply with the obligation to adopt provisions of domestic law by the amnesty laws; e) the alleged breach of the obligation to adopt provisions of domestic law due to the inadequate classification of the crime of forced disappearance; f) the reasonable term; g) the right to know the truth, and h) conclusion.

#### ***A. The obligation to investigate in cases of forced disappearance***

166. In principle, it is pertinent to remember that the systematic practice of forced disappearance supposes a disregard for the duty to organize the State apparatus to guarantee the rights recognized in the Convention, which reproduces the conditions of impunity for this type of act to be repeated. Hence, the importance of adopting all necessary measures to investigate and, where appropriate, punish those responsible; establish the truth of what happened; locate the whereabouts of the victims and inform their next of kin about it; as well as repair them fairly and adequately in your case<sup>218</sup>.

167. The obligation to investigate human rights violations is one of the positive measures that States must adopt to guarantee the rights recognized in the Convention. Thus, since its first ruling, this Court has highlighted the importance of the State's duty to investigate and punish human rights violations.<sup>219</sup>, which acquires particular importance given the seriousness of the crimes committed and the nature of the rights violated<sup>220</sup>. This obligation also arises from other inter-American instruments. Thus, in cases of disappearances

<sup>218</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 158 and, *Case of Osorio Rivera and family v. Peru, supra*, para. 176.

<sup>219</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 166 and, *Case of Osorio Rivera and family v. Peru, supra*, para. 177.

<sup>220</sup> Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 128, and *Case of Osorio Rivera and family v. Peru, supra*, para. 177.



forced disappearances, the obligation to investigate is reinforced by Article Ib of the Inter-American Convention on Forced Disappearance of Persons, in force for the State since March 15, 2002.<sup>221</sup>

168. This Court has already considered that, once a forced disappearance has occurred, it is necessary that it be effectively considered and treated as an illegal act that may result in the imposition of sanctions for those who commit, instigate, cover it up, or in any other way participate in its perpetration. Consequently, the Court has considered that whenever there are reasonable grounds to suspect that a person has been subjected to forced disappearance, a criminal investigation must be initiated. This obligation is independent of the filing of a complaint, since in cases of forced disappearance international law and the general duty to guarantee impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner, in such a way that it does not depend on the procedural initiative of the victim or their relatives or on the private contribution of evidence<sup>222</sup>.

***B. Lack of due diligence in the proceedings opened in the ordinary jurisdiction, both for the discovery of the Pucayacu graves and for the disappearance of Rigoberto Tenorio Roca (files No. 30-84, 1-86 and 109-2011)***

*B.1 Arguments of the parties and the Commission*

169. Regarding the first ordinary procedures opened in the eighties, the **Commission** it maintained that the State had not carried out immediate actions aimed at determining the whereabouts of the victim or the place where he could be deprived of liberty. In addition, he pointed out that the first actions took place months after the complaints were filed by the next of kin and fundamental steps were omitted. Regarding the ordinary criminal proceeding opened in 2003, the Commission argued that the various deficiencies have persisted, since the passengers of the bus where the aggrieved party traveled had not yet been called to testify, and neither was an inspection or search for mortal remains inside the Municipal Stadium of Huanta. On the other hand, the Commission highlighted that there were only three people investigated for mediate authorship, without actions having been carried out to determine who participated in the arrest of Rigoberto Tenorio Roca. With respect to the accused Captain Artaza Adrianzén, the Commission highlighted that the investigations into his person, as well as his possible capture, have been hampered given that he was allegedly kidnapped, and pointed out that the State had not presented information indicating that it adequately investigated and was able to prove said kidnapping.

170. Finally, the Commission drew attention to the fact that DNA tests were only taken in April 2009 from the next of kin of Rigoberto Tenorio Roca, "without this having led to the determination of the whereabouts or identification of the victim's mortal remains to date." In this regard, it indicated that there was no serious and exhaustive search strategy for the remains of the disappeared persons linked to this investigation, including Mr. Tenorio Roca, since a large part of the planned procedures have revolved around the Pucayacu graves, without all the planned procedures have been carried out regarding the identification of the remains that were located,

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<sup>221</sup> Article Ib of the Inter-American Convention on Forced Disappearance of Persons establishes: "The States Parties to this Convention undertake to: [...] b) Punish, within their jurisdiction, the perpetrators, accomplices, and accessories after the crime of forced disappearance of persons, as well as the attempted commission thereof."

<sup>222</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Background, above, para. 177, and Case of Osorio Rivera and family v. Peru, supra, para. 178.*

171. The **representatives** They substantially agreed with what was alleged by the Commission regarding the fact that extremely important procedures were not carried out and added that the whereabouts of the alleged victim were not discovered from the initial investigations. They also argued that the steps taken were not sufficient, since the testimonials of eyewitnesses were not obtained, such as that of Prosecutor Simón A. Palomino Vargas or the passengers on the bus where the alleged victim was traveling at the time of his arrest. In addition, they maintained that the authorities did not use coercive measures to obtain the appearance of said witnesses. They added that, although the investigations identified Álvaro Artaza Adrianzén as responsible for the arrest of Rigoberto Tenorio Roca, They did not give an account of the procedures or requests for information tending to identify the material authors of the arrest. They indicated that "there [was] not a single direct perpetrator currently identified, investigated, and/or prosecuted, despite the express request of the representatives of the victims that the names of the members of the patrols and of those who carried out countersubversive operations in the city of Huanta in July 1984 be requested from the competent military authority."

172. Regarding the search, location, and identification of the remains of the disappeared person, the representatives indicated that the location of the 13 missing bodies of the 50 found in the Pucayacu graves is still pending, remains that correspond to those detained in July and August 1984, including Rigoberto Tenorio Roca; coupled with the fact that the DNA results carried out on the recovered bodies are pending.

173. The **State** argued that, for the purposes of the analysis carried out by the Court, it should only take into account those proceedings that were ordered by the authorities, since in principle it is not incumbent on it to determine the origin or usefulness of specific investigative actions or measures. In the State's opinion, "during the course of the investigations, various actions were carried out that responded to due diligence guidelines and that, although there may have been some omissions and delays in carrying out any of them, when analyzed as a whole, they are not serious enough to establish an international responsibility of the State." He added that the Public Ministry is the independent and autonomous body that decides who are the people who are accused, therefore,

174. The State indicated that, currently, "it has directly and satisfactorily corrected the irregularities that occurred in the 1980s and 1990s, during the trial of persons accused of human rights violations," an example of which is the new proceeding opened in the ordinary jurisdiction in this case. It added that various procedures were carried out whose purpose was to determine the identification and presumed individual criminal responsibility of the accused. He stressed that "decisions on the determination of specific and suitable procedures for the development of investigations at the internal level, are adopted by the justice administration bodies within the scope of their powers," Therefore, the Court could not rule on the suitability and relevance of the practice or failure to carry out certain investigative measures in a criminal proceeding. In short, the State affirmed that "the actions of the Public Prosecutor's Office and the Peruvian Judiciary conformed to the due diligence guidelines necessary to satisfy the right of the next of kin to access justice."

## *B.2 Considerations of the Court*

175. In accordance with the foregoing, this Court must determine whether the State has committed violations of the rights recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof. Therefore, it corresponds to the Court, within the framework of its jurisdiction and functions, to assess whether the actions of the State in the course of the tax investigations and the criminal proceedings in the present case were adapted or not to the due diligence guidelines required to

Satisfy the right to access justice<sup>223</sup>. However, this does not mean that it replaces said authorities, but rather that in its jurisdictional function it is up to the Court to determine whether or not the State has violated its international obligations by virtue of the actions of its judicial bodies. Obviously, and as has already been highlighted in vast jurisprudence, this "may lead to the Court having to deal with examining the respective internal processes"<sup>224</sup>, in order to specify the international consequences of their actions or omissions in this case and provide the corresponding.

176. In this sense, although the Court has indicated that the duty to investigate is one of means, not of result, this does not mean, however, that the investigation can be undertaken as "a simple formality preordained to be unsuccessful" or as a "mere management of private interests, which depends on the procedural initiative of the victims or their next of kin or on the private contribution of evidence."<sup>225</sup> It is the responsibility of the state authorities to carry out a serious, impartial, and effective investigation by all available legal means, which must be aimed at determining the truth and the persecution, capture, trial, and eventual punishment of all those responsible for the masterminds and material acts, especially when state agents are involved.<sup>226</sup>, as in the present case.

177. Additionally, the Court has considered that the authorities in charge of the investigation have the duty to ensure that in the course of the same the systematic patterns that allowed the commission of serious violations of human rights are assessed.<sup>227</sup>, as in the present case. In order to guarantee its effectiveness, the investigation must be conducted taking into account the complexity of this type of event, which occurred within the framework of operations carried out by the Armed Forces that were in charge of political-military control of the areas declared in a state of emergency (*supra* para. 53), and the structure in which the people probably involved in the same were located.<sup>228</sup>, thus avoiding omissions in the collection of evidence and in the follow-up of logical lines of investigation<sup>229</sup>.

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<sup>223</sup> *Cf., mutatis mutandis, Case of Castillo González et al. v. Venezuela. Background.* Judgment of November 27, 2012. Series C No. 256, para. 160.

<sup>224</sup> *Cf., among others, Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Background.* Judgment of November 19, 1999. Series C No. 63, para. 222; *Baldeón García case*, *supra*, para. 142, and *Case of García Ibarra et al. v. Ecuador, supra*, para. twenty.

<sup>225</sup> *Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 177, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 161.

<sup>226</sup> *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 155, and *Case of Osorio Rivera and family v. Peru, supra*, para. 178.

<sup>227</sup> *Cf. Case of the La Rochela Massacre v. Colombia. Merits, Reparations and Costs.* Judgment of May 11, 2007. Series C No. 163, para. 156, and *Case of Rochac Hernández et al. v. El Salvador. Merits, Reparations and Costs.* Judgment of October 14, 2014. Series C No. 285, para. 154.

<sup>228</sup> Regarding the chain of command in force at the time of the events, the TRC maintained that it was configured as follows: the Political-Military Chief of the Huanta and La Mar Provinces was AP Commander Alberto Rivero Valdeavellano; He was followed by the Chief of the Marine Infantry Detachment of the Huanta and La Mar Provinces, Lieutenant Commander AP Álvaro Francisco Serapio Artaza Adrianzén; The Chief of the Huanta Counter-subversive Base was First Lieutenant AP Augusto Gabilondo García del Barco, however, control of the Navy Barracks came from the Political-Military Chief of Ayacucho, General Adrián Huamán Centeno, who had under his control the barracks and military bases stationed throughout the department of Ayacucho, part of Huancavelica and Apurímac. In addition, the CVR maintained, likewise, *cf.* "Huanta Case" report of March 7, 2003 (evidence file, volume I, annex 15 to the merits report, folios 433 to 440).

<sup>229</sup> *Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs.* Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 169.

178. However, in cases of forced disappearance such as the one at hand, the investigation will have certain specific connotations that arise from the very nature and complexity of the phenomenon investigated, that is, that, additionally, the investigation must include carrying out all the necessary actions in order to determine the fate or fate of the victim and the location of his whereabouts.<sup>230</sup> The Court has already clarified that the duty to investigate events of this nature subsists as long as there is uncertainty about the final fate of the disappeared person, since the right of the victim's next of kin to know what their fate was and, where appropriate, where their remains are, represents a fair expectation that the State must satisfy with all the means at its disposal.<sup>231</sup>

179. In order for an investigation of forced disappearance to be carried out effectively and with due diligence, all necessary means must be used to promptly carry out those essential and timely actions and inquiries to clarify the fate of the victims and identify those responsible for their forced disappearance.<sup>232</sup> To this end, the State must provide the corresponding authorities with the logistical and scientific resources necessary to collect and process the evidence and, in particular, with the powers to access the relevant documentation and information to investigate the facts denounced and obtain indications or evidence of the location of the victims.<sup>233</sup>

180. When analyzing the effectiveness of the investigations carried out, the Court will refer both to the procedures carried out to establish the corresponding criminal responsibilities and to the procedures aimed at locating the whereabouts of the victim.

181. From the proven facts, it stands out that in investigation No. 30-84, initiated in the ordinary jurisdiction due to the discovery of the 50 corpses in the Pucayacu graves, the examining magistrate disqualified himself in favor of the military jurisdiction (*suprapara*. 75), without any progress being made in the investigation to clarify the circumstances surrounding the death of said persons. For its part, in file No. 1-86 filed against Álvaro Artaza Adrianzén as a result of the complaint filed by Juan Tenorio Roca (*suprapara*. 80), only the statement of the victim's wife was obtained, since it was not possible to obtain the appearance of the passengers and the bus driver (*supra* para. 81). The foregoing evidences the omission to gather fundamental evidence to clarify the facts, such as: the inspection of the Huanta Municipal Stadium, since it could have provided relevant information to investigate the facts denounced and obtain indications or evidence of the whereabouts of the victim; receive the statement of the passengers and the driver of the bus in which Rigoberto Tenorio Roca was traveling, since they were eyewitnesses of the moment in which the Marines detained Mr. Tenorio Roca; and to collect, as appropriate, the statements of the Prosecutor Simón A. Palomino Vargas and Judge Juan Flores Rojas, who were in the military convoy that transported the victim.

182. Regarding the omissions described in the preceding paragraph, this Court emphasizes that they are of such importance for the investigation of the legal truth since they were normally suitable, and in any case irreplaceable, to clarify the fate of the victim and identify those responsible for

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<sup>230</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 80, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 439.

<sup>231</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *above*, para. 181, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, *supra*, para. 439.

<sup>232</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *above*, para. 174, and *Case of the Peasant Community of Santa Bárbara v. Peru*, *supra*, para. 227.

<sup>233</sup> Cf. *Case of Tiu Tojin v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 253, para. 327, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, *supra*, para. 487.

your demise<sup>2. 3. 4</sup>, that "the omission in its implementation was contrary to objective guidelines", and such omission can still be classified as "manifestly unreasonable"<sup>235</sup>. In this sense, the legal rights to which the investigation of an enforced disappearance falls require redoubling efforts in the measures that must be taken to achieve its objective, since the passage of time is directly proportional to the limitation -and in some cases, the impossibility- of obtaining evidence and/or testimonies, making it difficult and even rendering it null and void, the practice of probative proceedings in order to clarify the facts that are the subject of the investigation, identify the possible perpetrators and participants, and determine possible criminal responsibilities, as well as to clarify the fate of the victim and identify those responsible for his disappearance<sup>236</sup>.

183. With regard to the investigation related to the "Huanta Case" Report brought to the attention of the Public Prosecutor in 2003 by the Truth and Reconciliation Commission, the Court notes that the complaint was formalized by the Public Prosecutor only in 2006 and it was not until December 2011 that an investigation was opened (*supraparas.* 100, 106, 109). Regarding the actions from that moment on, the Court considers that the amount of evidence is mainly aimed at identifying the remains found in the only grave exhumed in 2009 in the Huanta cemetery (*supraparas.* 104 and 105). Regarding the determination of the whereabouts of the victim in this case, the file includes obtaining the DNA material from the wife and one of the sons (Jorge Rigoberto Tenorio Huamaní) of Mr. Tenorio Roca to carry out the corresponding comparison with the remains found (*suprapara.* 104). In this line, a genetic material comparison report was made, which yielded positive results for 12 of the 37 bodies (*suprapara.* 105), there being no positive result regarding Mr. Tenorio Roca.

184. The Court notes that the information available indicates that all measures have not been exhausted to identify possible burial or burial sites, either in the Huanta Cemetery or in other relevant places, where the remains of Mr. Tenorio Roca could be found. Indeed, after the hearing held before this Court, the State reported that the Prosecutor's Office had requested a series of measures leading to finding the remains of Mr. Tenorio Roca, namely: that more information be requested from the General Cemetery of Huanta about the places where the burial graves would be located; accompanying photos corresponding to the dates on which the aforementioned graves were dug, in order to verify how said area was at that time; that all the documentation related to the construction of the pavilions and their corresponding plans be presented to establish if said area was dug, since the pits could be located near them; that the graveyard, who witnessed the digging of the graves and continues to work in the cemetery, render his statement, and that a judicial inspection procedure be carried out in the aforementioned cemetery with the presence of forensic experts who were present at the exhumation procedure to locate other probable sites where the aforementioned graves would be found.

185. For its part, regarding the clarification of the facts related to the detention of Rigoberto Tenorio Roca and his subsequent disappearance, the Court notes that in 2011 various relevant procedures were ordered. Specifically, it was requested to collect various statements, including those of the Marines who worked in Huanta between July and August 1984, some of which had already been collected by the military authorities in the 1980s; those of persons detained in Huanta in 1984; that of the journalist who reported the Pucayacu graves; the testimony of a woman who

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<sup>2. 3. 4</sup> Cf. *Case of Osorio Rivera and family v. Peru*, *supra*, para. 184.

<sup>235</sup> *Case of Castillo González et al. v. Venezuela*, *supra*, para. 153.

<sup>236</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 150, and *Case of Osorio Rivera and family v. Peru*, *supra*, para. 185.

was on the bus where the victim was detained and the statement of Prosecutor Palomino Vargas, who was in the convoy that detained the victim. Likewise, a certified copy of the COMGEMAR Directive has been requested, which regulated the participation of the Peruvian Navy, as well as the functional organization chart of the members of the Navy in the emergency zones of Huanta and La Mar - Ayacucho in 1984 (*supra* para. 122). The Court notes that in the request for extension of the investigation made in 2015, that is, four years later, several of these measures are reiterated, of which only the statement of Prosecutor Palomino Vargas was obtained (*supra* para. 124).

186. Consequently, the evidence in this case shows that, although the investigative activity of the authorities in charge of promoting the investigations has been confirmed, all the measures that had to be carried out in order to gather evidence tending to clarify the disappearance of Mr. Tenorio Roca, as well as to identify the possible perpetrators of the facts and, where appropriate, link them to the proceeding, have not been exhausted. In this sense, the Court notes that it has not been possible to determine the complete list of persons who performed functions in the Marine Infantry Detachment of the provinces of Huanta and La Mar and the Huanta Countersubversive Base, who could have participated in the facts.

187. On the other hand, it is important to highlight that the military jurisdiction did not comply in the 1980s with the request for the appearance of the accused Artaza Adrián before the ordinary jurisdiction, who was subject to the authority of the military authorities, which made it difficult for him to appear at the trial, and his presumed death was subsequently declared. In addition, it does not go unnoticed that the CVR report included the recommendation to investigate his whereabouts, since there are indications that would indicate that he is alive, a situation that has not led to a line of investigation in the ongoing process. In this regard, it is up to the State to act with due diligence and take the necessary actions in order to locate it and, if applicable, submit it to proceedings.

188. In short, while it is true that the Public Ministry has the autonomy to make accusations against whoever it considers responsible for the facts, it is also true that, given the context and complexity of the facts, it is reasonable to consider that there are different degrees of responsibility at different levels, and the State is obliged to identify all the members who participated, as well as their degree of intervention in the commission of the forced disappearance.<sup>237</sup>; situation that is not denoted in the present case, since as is evident, the open investigation made accusations against three mediate perpetrators, without being able to carry out an investigation aimed at determining the other participants in the disappearance to make the respective accusation.

189. Based on all of the foregoing, the Court concludes that the investigations in the ordinary jurisdiction were not carried out with the necessary due diligence and diligence.

### ***C. Incompatibility of the military jurisdiction to judge human rights violations (files No. 784-84 and 524-86)***

#### *C.1 Arguments of the parties and the Commission*

190. Regarding court cases Nos. 784-84 and 524-86, the **Commission** indicated that they are contrary to the right of the victim or his next of kin to be heard by a competent, independent, and impartial tribunal, since said jurisdiction should only be used to try active military personnel for the alleged commission of duty crimes in the strict sense. In addition, according to the Commission, these cases of military origin omitted to carry out procedures of fundamental importance, in addition to the fact that the next of kin who testified before these authorities did so out of fear founded on their

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<sup>237</sup> Cf. *Case of Radilla Pacheco v. United Mexican States*, *supra*, para. 203, and *Case of Osorio Rivera and family v. Peru*, *supra*, para. 194.

life and personal integrity. The Commission maintained that the steps taken were not aimed at clarifying the facts, but rather at keeping them in impunity until the benefit of amnesty was granted.

191. In addition, the Commission argued that Peru violated the obligation to adopt provisions of domestic law, provided for in Article 2 of the Convention, because in application of Article 10 of Law No. 24150 the authorities of the ordinary jurisdiction refrained from continuing to hear the investigations. Likewise, it alleged that this norm was interpreted in a way that is incompatible with the Convention, extending the concept of infringement “in the exercise of its functions” and including the investigation of human rights violations such as those that occurred in the case. On the other hand, the Commission recognized that the Constitutional Court of Peru effectively declared article 10 of Law No. 24150 unconstitutional on March 16, 2004. However, it stressed that “this occurred 20 years after the disappearance occurred,

192. The **representatives** They stated that the requests for inhibition presented by the military authorities to those of the ordinary jurisdiction caused the facts and violations to be known by authorities that were not suitable. Additionally, they stated that Article 10 of Law No. 24150 was later declared unconstitutional. The representatives considered that all of this as a whole constituted violations of due process and the guarantee of independence, to the detriment of Mr. Tenorio Roca and his family members.

193. The **State** it stated that there was no intention to prosecute Álvaro Artaza Adrianzén in order to absolve him of his responsibility. In addition, he pointed out that the omission to capture the defendant had no impact on the criminal proceedings. On the other hand, it maintained that as of the date of the facts of this case, the actions of the Military Justice were understood to be in accordance with the standards of the time of the Inter-American Court, which had not ruled on the matter, and the domestic regulatory framework. The State indicated that only the judge in charge of file No. 1-86 disqualified himself based on Article 10 of Law No. 24150, which was declared unconstitutional in 2004; therefore, Article 2 of the American Convention is not violated.

### *C.2 Considerations of the Court*

194. The Court recalls that its jurisprudence regarding the limits of the competence of the military jurisdiction to hear facts that constitute violations of human rights has been constant, in the sense of affirming that in a democratic State of law, the military criminal jurisdiction must have a restrictive and exceptional scope and be aimed at the protection of special legal interests, linked to the functions of the military forces.<sup>238</sup> For this reason, the Court has indicated that in the military jurisdiction only active military personnel should be tried for the commission of crimes or misdemeanors that by their very nature violate the legal interests of the military order.<sup>239</sup> . Therefore, taking into account the nature of the crime and the injured legal right, the military criminal jurisdiction is not the competent jurisdiction to investigate and, where appropriate, judge and punish the perpetrators of human rights violations, but rather the prosecution of those responsible always corresponds to ordinary or common justice.<sup>240</sup>

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<sup>238</sup> Cf. *Case of Durand and Ugarte v. Peru*. Background Judgment of August 16, 2000. Series C No. 68, para. 117, and *Case of Quispialaya Vilcapoma v. Peru*, *supra*, para. 144.

<sup>239</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 128, and *Case of Quispialaya Vilcapoma v. Peru*, *supra*, para. 147.

<sup>240</sup> Cf. *Case of the La Rochela Massacre v. Colombia*, *supra*, para. 200, and *Case of Quispialaya Vilcapoma v. Peru*, *supra*, para. 145.

195. Along these lines, the Court has indicated that “[w]hen military justice assumes jurisdiction over a matter that should be heard by ordinary justice, the right to a natural judge is affected and, *a fortiori* due process”<sup>241</sup>, which, in turn, is closely linked to the right of access to justice. The judge in charge of hearing a case must be competent, as well as independent and impartial<sup>242</sup>. In this regard, the victims of human rights violations and their families have the right to have such violations heard and resolved by a competent court, in accordance with due process and access to justice.<sup>243</sup>

196. Regarding the State's argument that, on the date of the facts of the case, the action of military justice was understood to be in accordance with the standards of the time of the Inter-American Court, the Court notes that the obligation not to prosecute human rights violations through military jurisdiction is a guarantee of due process that derives from the obligations contained in Article 8(1) of the American Convention, therefore it is independent of the year in which the violations occurred.<sup>244</sup> This guarantee is recognized in the American Convention and must be respected by the States Parties from the moment they ratify said treaty, so that it does not arise from its application and interpretation by this Court in the exercise of its contentious jurisdiction.<sup>245</sup> Therefore, the Court reiterates that the criteria for investigating and prosecuting human rights violations before the ordinary jurisdiction reside not in the seriousness of the violations but in their very nature and in that of the legal right protected.<sup>246</sup>

197. Under these parameters, it is evident that the intervention of the military jurisdiction was not indicated to carry out the investigations corresponding to the 50 bodies found in the Pucayacu graves (*supraparas. 73 to 78*), nor the inquiry into the disappearance of Rigoberto Tenorio Roca (*suprapara. 84*). Allegations of forced disappearance are acts that are related to facts and criminal types that in no case have a connection with military discipline or mission. On the contrary, the alleged acts committed by military personnel against Rigoberto Tenorio Roca affected legal rights protected by domestic criminal law and the American Convention, such as the dignity, liberty, and personal integrity and life of the victims. Therefore, the invocation of military jurisdiction in said cases went against the parameters of exceptionality and restriction that characterize said jurisdiction. In addition, it operated without taking into account the nature of the acts involved; He obstructed for several years the investigations in ordinary justice, which was the jurisdiction competent to carry out the investigations,

198. However, the Court has established that the violation of the principle of the natural judge is configured during the time in which the military authorities participated in the investigation or processes that involve violations of human rights, while the sentences *Quispialaya Vilcapoma*<sup>247</sup>,

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<sup>241</sup> *Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs, supra*, para. 128, and *Case of Cruz Sánchez et al. v. Peru, supra*, para. 398.

<sup>242</sup> *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs, supra*, para. 130, and *Case of Cruz Sánchez et al. v. Peru, supra*, para. 398.

<sup>243</sup> *Cf. Case of Radilla Pacheco v. Mexico, supra*, para. 275, and *Case of Cruz Sánchez et al. v. Peru, supra*, para. 398.

<sup>244</sup> *Cf. Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 248, para. 244; and Case of Quispialaya Vilcapoma v. Peru, supra*, para. 150.

<sup>245</sup> *Cf. Case of Vélez Restrepo and Family v. Colombia, supra*, para. 241, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 151.

<sup>246</sup> *Cf. Case of Vélez Restrepo and Family v. Colombia, supra*, para. 244, and *Case of Osorio Rivera and Family v. Peru, supra*, para. 190.

<sup>247</sup> *Cf. Case of Quispialaya Vilcapoma v. Peru, supra*, paras. 141 to 152.



*Osorio Rivera and Family*<sup>248</sup> and *the cantuta*<sup>249</sup>, all against Peru, coincide in declaring the State responsible for violating the principle of the natural judge, only for the time in which said processes were in operation, since later the investigation was continued in the jurisdiction that should know them from the beginning, that is, the ordinary jurisdiction.

199. For its part, in the case *Peasant Community of Santa Bárbara v. Peru*, said violation was taken into account as an obstacle to the investigations, since the Court did not have information regarding what happened later in the military jurisdiction<sup>250</sup>.

200. In a different way, in the judgment of the case *Tarazona Arrieta et al. v. Peru*, Article 8 of the Convention was not declared to have been violated by the investigations carried out in the military jurisdiction, given that the proceedings followed against the perpetrator of the facts were under the knowledge of the military jurisdiction for less than a year and that, after the reopening of the case, it was only heard by the ordinary jurisdiction, which finally sentenced the person responsible. In addition, in said case, the ordinary jurisdiction never failed to hear the alleged violations because it did not comply with the request made by the military judge. Therefore, the analysis only corresponded to the impact that the fact that the process was found for a certain period of time under the knowledge of the military jurisdiction, in addition to the ordinary one, would have had in a reasonable time; situation that in the same way did not affect the reasonable term<sup>251</sup>.

201. In the instant case, unlike the case *Tarazona Arrieta* in which the case pursued in the ordinary jurisdiction continued open in parallel to the one that was opened in the military jurisdiction, both the case for the Pucayacu graves and the one concerning the forced disappearance of Rigoberto Tenorio Roca were referred to the military jurisdiction, which later decided to end the criminal proceedings by dismissal or in application of the amnesty law, leaving the facts in total impunity. The Court considers that, both when settling the Supreme Court of Justice of the Republic the dispute of competence in favor of the military jurisdiction under the figure of the crime of duty (*supra* para. 76), as well as when the Huanta Investigating Court was inhibited from hearing the facts in favor of the military jurisdiction based on Law No. 24150 (*supra* para. 93), added to the period during which the cases remained in the military jurisdiction between the years 1984 to 1986 and 1986 to 1995 respectively, constituted a violation of the guarantee of a natural judge. Therefore, the international responsibility of the State for the violation of Article 8.1 of the American Convention was established.

202. Given that the military courts were not competent, the Court considers that it is not necessary to rule on the arguments of the Commission and the representatives regarding the alleged lack of due diligence and other judicial guarantees.

203. Regarding the argument of the Inter-American Commission regarding the alleged violation of Article 2 of the Convention, the Court notes that Article 10 of Law No. 24150<sup>252</sup> was used by the Investigating Judge of Huanta as a basis for his inhibition (*supra* para. 93). In this regard, it is

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<sup>248</sup> Cf. *Case of Osorio Rivera and family v. Peru*, *supra*, paras. 187 to 191.

<sup>249</sup> Cf. *Case of La Cantuta v. Peru*, *supra*, paras. 140 to 142 and 145.

<sup>250</sup> Cf. *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, paras. 244 to 246.

<sup>251</sup> Cf. *Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of 15 October 2014. Series C No. 286, paras. 108 to 110.

<sup>252</sup> Said article established that: "Members of the Armed Forces or Police Forces, as well as all those who are subject to the Code of Military Justice who are providing services in areas declared in a state of emergency, are subject to the application of said code. The offenses classified in the Code of Military Justice that they commit in the exercise of their functions fall within the jurisdiction of the private military jurisdiction, except for those that have no connection with the service" (file of proceedings before the Commission, tome IV, folio 1808).

It is pertinent to remember that Law No. 24150 was adopted in 1985 and conferred jurisdiction on the military jurisdiction to hear criminal complaints against members of the Armed and Police Forces for acts committed while on duty in areas declared in a state of emergency. The TRC indicated that said law "favored impunity for State agents responsible for human rights violations."<sup>253</sup> There is no dispute between the parties and the Commission regarding the fact that the Constitutional Court of Peru declared article 10 of Law No. 24150 unconstitutional on March 16, 2004, the effects of which, according to the Peruvian legal system, implied that said article ceased to have legal effects.<sup>254</sup> leaving the following text subsisting: "[t]he infractions typified in the Code of Military Justice that they commit in the exercise of their functions fall within the jurisdiction of the exclusive military jurisdiction, except for those that are not related to the service."<sup>255</sup> However, the Commission considered that, in any case, there was a violation of Article 2 of the Convention.

204. The Court, as it understood it in the case *Cruz Sánchez and others v. Peru*, considers that the decision to opt out in favor of the military jurisdiction in the present case was due to the insistence of the military jurisdiction, in such a way that it had effects for the specific case as it was analyzed *supra*. Subsequently, both the Constitutional Court<sup>256</sup> as the Supreme Court of Justice of the Republic<sup>257</sup> modified said practice based on the aforementioned norm from its declaration of unconstitutionality with effects *erga omnes* and establishing criteria of a general and binding nature in the sense that military jurisdiction must be restricted to functional crimes that can be determined by the protected legal right and not to common crimes that imply violations of human rights.<sup>258</sup> Consequently, the Court does not find an additional violation of Article 2 of the American Convention, in relation to Articles 8 and 25 thereof.

#### ***D. Failure to comply with the obligation to adopt provisions of domestic law by amnesty laws***

##### *D.1 Arguments of the parties and the Commission*

205. The **Commission** recalled that on June 19, 1995, the Supreme Council of Military Justice granted the benefit of amnesty to Captain Álvaro Artaza Adrianzén, considering that the acts with which he was accused fell within the scope of Law No. 26479, which prohibited the prosecution of crimes committed by State agents or civilians "as a consequence of the fight against terrorism." Additionally, on July 2, 1995, Peru adopted Law No. 26492, which specified that the amnesty law was not subject to judicial review, since its issuance fell under the exclusive jurisdiction of the Legislative Branch. By virtue of the amnesty, the Commission indicated that between June 1995

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<sup>253</sup> *cf.* Truth and Reconciliation Commission, Final Report, 2003, Volume VIII, *General conclusions*, para. 75 (evidence file, volume I, annex 8 to the merits report, page 197).

<sup>254</sup> Article 204 of the Political Constitution of Peru of 1993 establishes that: "The judgment of the Court that declares the unconstitutionality of a norm is published in the official gazette. The day after the publication, said rule is without effect. There is no retroactive effect on the judgment of the Court that declares unconstitutional, in whole or in part, a legal norm".

<sup>255</sup> *cf.* Constitutional Court, File No. 0017-2003-AI/TC, Judgment of March 16, 2004, resolution 1.e. (Evidence file, volume II, annex 95 to the submission of the case, page 1099).

<sup>256</sup> *cf.* Constitutional Court, File No. 0017-2003-AI/TC, Judgment of March 16, 2004, paras. 129 to 133 (evidence file, volume II, annex 95 to the submission of the case, folios 1095 to 1096).

<sup>257</sup> *cf.* Supreme Court of Justice of the Republic, Permanent Criminal Chamber, Competition dispute No. 18-2004, Resolution of November 17, 2004 (evidence file, tome VIII, annex 44 to the State's response, folios 4118 to 4119).

<sup>258</sup> *Cf. Case of Cruz Sánchez et al. v. Peru, supra*, para. 414.

and the second half of 2003, the Peruvian authorities refrained from taking any type of action regarding the forced disappearance of Rigoberto Tenorio Roca.

206. Therefore, the Commission held that the promulgation of Laws Nos. 26479 and 26492 constituted an interference in the judicial function and prevented the filing of an effective remedy for the violation of human rights. In particular, while Laws Nos. 26479 and 26492 remained in force, the opening of new investigations aimed at clarifying the forced disappearance of Rigoberto Tenorio Roca was prohibited. Consequently, given the legal impediment for the next of kin of the alleged victim to obtain truth and justice, the Commission concluded that the State violated the rights provided for in Articles 8.1 and 25.1 of the American Convention, in relation to the obligations provided for in Articles 1.1 and 2 of the same instrument.

207. The **representatives** They argued that, although Amnesty Laws Nos. 26479 and 26492 were declared devoid of legal effect by the Inter-American Court, what was resolved by the Court did not lead to the resumption of a new ex officio investigation into the disappearance of Mr. Tenorio Roca. They also specified that "the amnesty laws have not had legal effects for this case during the new investigation that began in 2003, therefore it [was] not necessary to adopt additional measures in Peruvian domestic law to effectively guarantee the deprivation of such effects." However, they indicated that during the entire time that the amnesty laws had legal effects, in addition to the fact that in this case the investigation carried out by the Military Court was archived in application of the aforementioned amnesty laws, the State violated the duty to adapt its internal legislation to international standards. They added that, by favoring the filing of one of the investigations into the disappearance of Mr. Tenorio Roca and legally preventing his next of kin from raising a new investigation into the disappearance, the State failed to comply with its obligation to adapt its domestic law to the American Convention, in accordance with the provisions of Article 2 of said international instrument, during the period in which the amnesty laws had legal effect.

208. The **State** alleged that, although Amnesty Laws Nos. 26479 and 26492 were passed in 1995, after the sentence handed down in the case *High neighborhoods* Measures were adopted to rectify this situation, since various processes were reopened and unarchived. In this sense, he stressed that the measures adopted led to consider said laws as non-existent in the national legal system, therefore they did not take effect at the time and do not have it now.

#### *D.2 Considerations of the Court*

209. In relation to the general obligation of States to adapt domestic legislation to the Convention, contained in Article 2 of the American Convention<sup>259</sup>, it is necessary to remember that the Court has already analyzed the content and scope of amnesty laws Nos. 26479 and 26492 in the case *Barrios Altos v. Peru*, in whose Judgment on the merits of March 14, 2001, declared that they are incompatible with the American Convention and, consequently, lack legal effects<sup>260</sup>. The Court interpreted that Judgment on the merits in the sense that "[t]he promulgation of a law manifestly contrary to the obligations assumed by a State party to the Convention constitutes *per se* violation thereof and generates international responsibility of the State [and] that, given the nature of the violation constituted by amnesty laws No. 26479 and No. 26492, it

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<sup>259</sup> Article 2 establishes: "If the exercise of the rights and freedoms mentioned in Article 1 is not already guaranteed by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional procedures and the provisions of this Convention, the legislative or other measures that may be necessary to make such rights and freedoms effective."

<sup>260</sup> Cf. *Case of Barrios Altos v. Peru. Background*, Judgment of March 14, 2001. Series C No. 75, para. 44 and fourth operative paragraph.

resolved in the judgment on the merits in the *Barrios Altos* case has general effects"<sup>261</sup>. In the Judgment on reparations and costs in the case *Barrios Altos v. Peru*, of November 30, 2001, the Court ordered the State to apply what it ordered in the Judgment on the interpretation of the Merits Judgment "on the meaning and scope of the declaration of ineffectiveness of Laws No. 26479 and [No.] 26492."<sup>262</sup>; that is, to give general effect to the provisions of the Judgment on the merits.

210. The incompatibility *ab initio* of the amnesty laws with the Convention has been materialized in general in Peru since it was declared by the Court in the judgment of the case *Barrios Altos v. Peru*; that is, since March 14, 2001<sup>263</sup>. In addition, in some cases the State has suppressed the effects that these laws could have generated at some point. In the Order to monitor compliance with the judgment of September 22, 2005, this Court declared that, in accordance with what was stated in the ninth recital thereof, the State had fully complied with "the application of the provisions of the Court in its Judgment on the interpretation of the Judgment on the merits of September 3, 2001 in this case" regarding the meaning and scope of the declaration of ineffectiveness of Laws No. 26479 and 26492 (paragraph reso 5.a) of the Judgment on Reparations of November 30, 2001"<sup>264</sup>. To this end, it took into account that the Judgment of March 14, 2001 was published in the Official Gazette "El Peruano" on April 8, 2005, and the Resolution of the National Prosecutor issued on April 18, 2005.

211. As can be seen from the facts proven in this case, on June 19, 1995, the Supreme Council of Military Justice granted the accused, Captain Álvaro Artaza Adrianzén, the benefit of amnesty, by virtue of Law No. 26479, which led to the filing of the investigation into the forced disappearance of Mr. Tenorio Roca (*supraparas.* 96 and 97). Subsequently, during the period in which the amnesty laws were applied in Peru, the facts remained without being the subject of any investigation until in 2003 the CVR recommended that the Public Prosecutor open an investigation into the facts of the "Huanta Case" Report. Three years later, on September 1, 2006, the First Supraprovincial Criminal Prosecutor of Ayacucho filed a complaint (*suprapara.* 100), and the process is currently still in the investigation phase.

212. However, the State argued that it has adopted the measures to correct any eventual violation due to the application of the aforementioned amnesty law, since the investigation into the facts of this case has been reopened in 2003. It is therefore up to us to determine whether there has been a breach of Article 2 of the Convention, in relation to Articles 8(1) and 25(1) thereof.

213. For the purposes of the discussion raised, the Court notes that, after the issuance of the judgment in the case *Barrios Altos v. Peru* and compliance with the provisions therein, a series of judgments regarding Peru have addressed alleged violations such as the one based on the *sub judge*, both in cases where there was an express application of the amnesty laws and in others in which there were no specific acts of application of the amnesty laws, but in which it was taken into account that these constituted a general obstacle due to the impossibility of proceeding with the investigation or trial under the aforementioned regulations..

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<sup>261</sup> *Case of Barrios Altos v. Peru. Interpretation of the Merits Judgment.* Judgment of September 3, 2001. Series C No. 83, para. 18 and second operative paragraph.

<sup>262</sup> *Case of Barrios Altos v. Peru. Reparations and Costs.* Judgment of November 30, 2001. Series C No. 87, fifth operative paragraph, paragraph a).

<sup>263</sup> *Cf. Case of La Cantuta v. Peru, supra*, para. 187.

<sup>264</sup> *Case of Barrios Altos v. Peru. Supervision of Compliance with Judgment.* Resolution issued by the Court Inter-American Court on September 22, 2005, first declaratory point.

214. Thus, in the case *La Cantuta vs. Peru*<sup>265</sup> The Court held that the Supreme Execution of June 16, 1995 of the Supreme Council of Military Justice constituted an act of application of the amnesty laws and took effect until that same body declared the nullity of that act through the Supreme Execution of October 16, 2001, in compliance with domestic provisions and the provisions of the Inter-American Court in the case *High neighborhoods*. In addition, it stressed that there was no evidence that the amnesty laws have been applied in the investigations and criminal proceedings opened since 2001, or that they have prevented the opening of other investigations or proceedings, in relation to the facts of said case or other cases in Peru. Based on the foregoing, the Court concluded that, during the period in which the amnesty laws were applied in said case, the State failed to comply with its obligation to adapt its domestic law to the Convention contained in Article 2 thereof, in relation to Articles 4, 5, 7, 8.1, 25 and 1.1 of the same treaty, to the detriment of the next of kin. In turn, it noted that it had not been proven that, subsequently and up to the time of issuance of said judgment, *ab initio* with the Convention in the Barrios Altos case.

215. Along the same lines, in the case *Tarazona Arrieta et al. v. Peru*<sup>266</sup> The Court determined that the criminal proceeding was shelved for more than seven years and four months due to the application of Amnesty Law No. 26479. Despite the fact that in 2003 the "unshelving" of the case was ordered due to the provisions of the case *Barrios Altos v. Peru*, the Court concluded that the State had breached the duty to adapt its domestic law, contained in Article 2 of the Convention, in relation to Articles 8.1 and 25 of said instrument, due to the application of Amnesty Law No. 26479 in the proceedings against Antonio Evangelista Pinedo, to the detriment of the next of kin of Mrs. Tarazona Arrieta.

216. Furthermore, in cases *Anzualdo Castro v. Peru*<sup>267</sup> and *Osorio Rivera and family v. Peru*<sup>268</sup>, Despite the fact that no specific procedural acts were verified as a result of the entry into force and application of Laws Nos. 26479 and 26492, the Court determined that this regulation constituted a general obstacle to the investigations of serious human rights violations in Peru during the period in which they were applied. Consequently, the Court determined that the State failed to comply with its obligation to adapt its domestic law to the Convention for said specific period of time, in which procedural inactivity was verified due to the validity of the aforementioned laws.

217. In the case of the *Peasant Community of Santa Bárbara v. Peru*<sup>269</sup>, despite having ordered in 1995 the application of the amnesty laws both in the military and in the ordinary jurisdiction, in 2002 the process was reopened in the military jurisdiction and in 2005 in the ordinary jurisdiction, in such a way that said process resulted in a sentence of 20 years of imprisonment and the arrest of the absent defendants. In this case, which constitutes the most recent precedent, the Court considered that the application contrary to the Convention of Amnesty Law No. 26479, resulted in the investigation being archived in the ordinary jurisdiction for 10 years, which affected the continuity of the aforementioned process and prevented the investigation and punishment of those responsible for serious human rights violations during that period of time. Notwithstanding this, The Court noted that the application of the aforementioned Amnesty Law has ceased to constitute an obstacle to the judicial resolution of the case. Consequently, the Court concluded that the

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<sup>265</sup> Cf. *Case of La Cantuta v. Peru*, *supra*, paras. 165 to 189.

<sup>266</sup> Cf. *Case of Tarazona Arrieta et al. v. Peru*, *supra*, paras. 155 to 158.

<sup>267</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 163.

<sup>268</sup> Cf. *Case of Osorio Rivera and Family v. Peru*, *supra*, paras. 213 to 217.

<sup>269</sup> Cf. *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, paras. 247 to 250.

The application of said legal system constituted an obstacle to the due investigation in violation of Articles 8 and 25 of the Convention.

218. As is evident, unlike the precedent *Peasant Community of Santa Barbara*, in the present case there is no formal act of specific inapplicability or, in other words, a reopening of the investigation filed for the forced disappearance of Mr. Tenorio Roca, but based on the general measures adopted by Peru in compliance with the judgment in the case *High neighborhoods* (*suprapara*. 210) and the report issued by the CVR, the investigation related to the "Huanta Case" Report (*suprapara*. 183). Therefore, the Court notes that the application contrary to the Convention of Amnesty Law No. 26479 prevented the investigation and punishment of those responsible for the serious human rights violations committed to the detriment of Rigoberto Tenorio Roca for a period of at least eight years.

219. Therefore, in response to what was resolved in previous cases, the Court considers that the State failed to comply with the duty to adapt its domestic law to the Convention, contained in Article 2 of said instrument, in relation to Articles 8.1 and 25.1 of the same treaty, due to the application of Amnesty Law No. 26479 in the proceeding followed by the disappearance of Mr. Tenorio Roca and during the period in which the amnesty laws were applied in Peru.

***E. Failure to comply with the obligation to adopt provisions of domestic law due to the inadequate classification of the crime of forced disappearance***

***E.1 Arguments of the parties and the Commission***

220. The **Commission** argued that the State has not complied with the provisions of the Court in the cases *gomez palomino* and *anzualdo castro* regarding the need to adapt the definition of article 320 of the Peruvian Penal Code. For the Commission, "although the Peruvian State has mentioned the existence of bills aimed at adjusting article 320 of the Penal Code to inter-American standards, the information available indicates that such bills have not yet been debated by the plenary session of the Congress of the Republic." In addition to this legislative omission, the Commission noted that "the highest instance of the Peruvian Judiciary has adopted resolutions whose content is unaware of inter-American standards," referring to Plenary Agreement No. 9-2009/CJ-116. In summary, For the Commission, "[t]he fact that the forced disappearance of persons is typified as a special offense in Article 320 of the [P]eruvian Penal Code requires due conventionality control from the competent judicial authorities in order to adjust its interpretation to the scope of Article III of the Inter-American Convention on Forced Disappearance of Persons, which expressly establishes that the aforementioned crime 'shall be considered continuous or permanent until the fate or whereabouts of the victim is established.'" Therefore, The Commission considered that the prohibition of criminal prosecution for forced disappearance in relation to those persons who ceased to be State agents at the time that said criminal offense entered into force in domestic law violates Article III of the aforementioned Inter-American Convention and the jurisprudence of the organs of the Inter-American human rights system. As a consequence, the Commission concluded that, "since the Peruvian State has not modified to date the criminal offense of forced disappearance provided for in Article 320 of the Criminal Code through the legislative or judicial mechanisms provided for in its legal system, [...] there remains a breach of the obligation to adopt provisions of domestic law, under the terms of Article 2 of the American Convention and III of the [Inter-American Convention]."

221. The **representatives** argued that the State has permanently failed to comply with the obligation to adapt the criminal offense of forced disappearance provided for in article 320 of the Penal Code to the provisions of the Inter-American Court, since it has not complied with what was established by the Court in the *Gómez Palomino*, *Anzualdo Castro* and *Osorio Rivera* cases, all against Peru. In particular, they indicated that the current criminal offense of article 320 of the Penal Code does not conform to the

international obligations assumed by Peru in light of Article II of the Inter-American Convention on Forced Disappearance of Persons, by restricting the authorship of the disappearance to public officials or servants, does not contain the essential element of the refusal to acknowledge the detention and reveal the fate or whereabouts of the detained person and requires due verification of the disappearance, which could lead to placing the burden of proof on the victims or their relatives. However, they highlighted that "[t]he failure to adopt measures regarding the non-compliance with the obligations derived from Articles 2 of the Convention and III of the [Inter-American Convention] would not have generated consequences in the processing of the new investigations into the disappearance of Rigoberto Tenorio Roca."

222. The representatives highlighted that Plenary Agreement No. 9-2009/CJ-116 of November 13, 2009, issued by the Criminal and Transitory Chambers of the Supreme Court of the Republic of Peru, "aggravates the problems caused by the incompatibility of the criminal offense of forced disappearance with international standards," since it constituted "a measure to unify jurisprudence in matters of forced disappearance of persons" and was a precedent binding. Specifically, the representatives noted that foundation 15, literal c, of said Agreement establishes that "State agents responsible for acts that constitute forced disappearance, prior to April 8, 1991, will only be prosecuted if, as of said date, they retain the status of public official, Otherwise, it will not be possible to prosecute them under the criminal offense of forced disappearance described in article 320 of the Peruvian Penal Code, leaving such acts unpunished." For the representatives, said provision contravenes the jurisprudence of this Court, where it was clearly specified that "as long as the fate or whereabouts of the victim is not established, the forced disappearance remains unchanged regardless of changes in the author's status as 'public servant'." Based on the foregoing, the representatives concluded that, "[although] the adoption of Plenary Agreement No. 9-2009/CJ-116 does not constitute a legislative measure of the Peruvian State, it constitutes a measure adopted by the State, the scope of which would limit the enjoyment of the rights recognized by the American Convention, to the detriment of the victims of forced disappearance of persons and their next of kin, in breach of the obligation imposed by Article 2 of the American Convention." Therefore, they concluded that the State has not yet complied with legislatively adapting the criminal offense of forced disappearance to the standards established by the inter-American system for the protection of human rights in accordance with the sentences issued by the Inter-American Court. They concluded by stating that, "[t]he efforts of the Supreme Court of the Republic to overcome the difficulties exposed by the Inter-American Court through binding jurisprudential doctrine have not been complete, therefore, the State continues to fail to comply with Articles 2 of the American Convention and III of the [Inter-American Convention on Forced Disappearance of Persons]." failing to comply with the obligation imposed by Article 2 of the American Convention." Therefore, they concluded that the State has not yet complied with legislatively adapting the criminal offense of forced disappearance to the standards established by the inter-American system for the protection of human rights in accordance with the sentences issued by the Inter-American Court. They concluded by stating that, "[t]he efforts of the Supreme Court of the Republic to overcome the difficulties exposed by the Inter-American Court through binding jurisprudential doctrine have not been complete, therefore, the State continues to fail to comply with Articles 2 of the American Convention and III of the [Inter-American Convention on Forced Disappearance of Persons]." failing to comply with the obligation imposed by Article 2 of the American Convention." Therefore, they concluded that the State has not yet complied with legislatively adapting the criminal offense of forced disappearance to the standards established by the inter-American system for the protection of human rights in accordance with the sentences issued by the Inter-American Court. They concluded by stating that, "[t]he efforts of the Supreme Court of the Republic to overcome the difficulties exposed by the Inter-American Court through binding jurisprudential doctrine have not been complete, therefore, the State continues to fail to comply with Articles 2 of the American Convention and III of the [Inter-American Convention on Forced Disappearance of Persons]." They concluded that the State has not yet complied with legislatively adapting the criminal offense of forced disappearance to the standards established by the inter-American system for the protection of human rights in accordance with the sentences issued by the Inter-American Court. They concluded by stating that, "[t]he efforts of the Supreme Court of the Republic to overcome the difficulties exposed by the Inter-American Court through binding jurisprudential doctrine have not been complete, therefore, the State continues to fail to comply with Articles 2 of the American Convention and III of the [Inter-American Convention on Forced Disappearance of Persons]." They concluded that the State has not yet complied with legislatively adapting the criminal offense of forced disappearance to the standards established by the inter-American system for the protection of human rights in accordance with the sentences issued by the Inter-American Court. They concluded by stating that, "[t]he efforts of the Supreme Court of the Republic to overcome the difficulties exposed by the Inter-American Court through binding jurisprudential doctrine have not been complete, therefore, the State continues to fail to comply with Articles 2 of the American Convention and III of the [Inter-American Convention on Forced Disappearance of Persons]."

223. The **State** alleged that, although the criminal offense of forced disappearance has been maintained since the publication of Law No. 26926 of 1998, which incorporated it into the Peruvian Penal Code as a crime against humanity, "in the present case there is no relationship between the presumed criminal responsibility of the alleged perpetrators of the crime of forced disappearance at the internal level with the wording of the criminal offense of forced disappearance." The State pointed out that "the investigations have addressed the facts, framing them within the crime in force in the Peruvian legal system at the time." In this regard, it maintained that, since forced disappearance is a permanent crime, the fact that it was not criminalized in Peru in 1984 does not constitute an insurmountable limit, as the Peruvian Constitutional Court has ruled. In that sense, It affirmed that "the alleged undue normative characterization has not been an obstacle to the effective development of the investigations or proceedings opened for the alleged forced disappearance of Mr. Rigoberto Tenorio Roca." The State concluded that "the duty contemplated in Article 2 of the American Convention has been fulfilled,

like Article III of the Inter-American Convention on Forced Disappearance of Persons”.

224. Subsequently, the State clarified that the criterion contained in paragraph 15.c) of Plenary Agreement No. 9-2009/CJ-116 has fallen into disuse as of the receipt of the jurisprudence of the Inter-American Court, for which reason the Supreme Court itself and the National Criminal Chamber, which hear cases of forced disappearance of persons, would have disassociated themselves from the aforementioned Plenary Agreement. He cited several precedents that would show that since 2010 the Supreme Court itself in several cases on forced disappearance has departed from this legal doctrine that it established in 2009, leaving in disuse the criterion that prevented the person who was no longer an official at the time the criminal law on disappearance came into force from being prosecuted. Consequently, the State considered that the Plenary Agreement, in its most criticized aspect,

### *E.2 Considerations of the Court*

225. In the case *Osorio Rivera and others v. Peru*, the Court recapitulated the general obligation of the States to adapt their internal legislation to the norms of the American Convention<sup>270</sup>, which is also applicable to the Inter-American Convention on Forced Disappearance of Persons<sup>271</sup>. From it derives the duty of States to classify forced disappearance as an autonomous crime and the definition of the punishable conducts that compose it.<sup>272</sup>, taking into consideration Article II of the aforementioned Convention<sup>273</sup>, where the elements that the criminal type must contain in the internal legal system are found.

226. In the case *Gomez Palomino*, This Court referred to the inadequacy of Article 320 of the Peruvian Penal Code<sup>274</sup> with international standards due to the following reasons: a) Article 320 of the Penal Code of Peru restricts the authorship of forced disappearance to "officials or public servants." This classification does not contain all the forms of criminal participation included in Article II of the Inter-American Convention on Disappearance

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<sup>270</sup> In the American Convention, this principle is included in Article 2, which establishes the general obligation of each State Party to adapt its domestic law to its provisions, in order to guarantee the rights recognized therein, which implies that domestic law measures must be effective (principle of *effet utile*). *Case of Heliodoro Portugal v. Panama*, *supra*, para. 179. This duty implies the adoption of measures in two aspects. On the one hand, the suppression of norms and practices of any nature that entail a violation of the guarantees provided for in the Convention. On the other, the issuance of standards and the development of practices leading to the effective observance of said guarantees. *Cf. Case of La Cantuta v. Peru*, *supra*, para. 172, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 111.

<sup>271</sup> *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 193, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 204.

<sup>272</sup> *Cf. Case of Heliodoro Portugal v. Panama*, *supra*, para. 181, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 205.

<sup>273</sup> The article in question establishes that forced disappearance shall be considered: "[...] the deprivation of liberty of one or more persons, whatever their form, committed by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by the lack of information or the refusal to acknowledge said deprivation of liberty or to report on the whereabouts of the person, thus preventing the exercise of legal remedies and the pertinent procedural guarantees."

<sup>274</sup> The article in question provides the following: "Proven disappearance. Article 320.- The official or public servant who deprives a person of their freedom, ordering or executing actions that result in their duly proven disappearance, will be punished with a custodial sentence of not less than fifteen years and disqualification, in accordance with Article 36 subsections 1) and 2).



Forced Persons, thus resulting incomplete<sup>275</sup>; b) the refusal to acknowledge the deprivation of liberty or provide information on the fate or whereabouts of persons and for not leaving traces or evidence must be present in the classification of the crime because this allows it to be distinguished from others with which it is usually associated; however, article 320 of the Peruvian Penal Code does not include it<sup>276</sup>; c) As article 320 of the Penal Code is worded, which makes a reference to the fact that the disappearance must be "duly proven", it presents serious difficulties in its interpretation. In the first place, it is not possible to know if this due verification should be prior to the type's complaint and, secondly, it is not clear from there who should do this verification<sup>277</sup>. The latter "does not allow the State to fully comply with its international obligations"<sup>278</sup>.

227. Likewise, regarding Plenary Agreement No. 09-2009/CJ-116 of the Supreme Court of Justice of the Republic of Peru of November 13, 2009, this Court has already had the opportunity to rule on it in the case *gomez palomino*, occasion in which he indicated that said agreement does not satisfy the obligation to reform the internal criminal legislation<sup>279</sup>. In addition, the claim of said Plenary Agreement according to which "despite the fact that the state of disappearance of the victim subsists at the time the law that typified the crime of forced disappearance of persons enters into force, since it is a special crime of its own - it can only be committed by civil servants or public servants - it is essential that such official condition be present when the criminal law enters into force"<sup>280</sup>, generates impunity gaps regarding events that occurred before the date on which the crime of forced disappearance was incorporated into Peruvian law, because it is essential, according to it, that by this date the accused person retains his status as a public official. This results in that, in cases like the present one in which the victim has been missing for 32 years, the quality required for the active subject may vary over time.

228. From the proven facts, the Court notes that Article 320 of the Penal Code was used to investigate this case and that in the investigation that began in 2003, the following are being prosecuted with a restricted appearance order and in compliance with rules of conduct: Adrián Huamán Centeno –Former Political-Military Chief of the Department of Ayacucho-; Alberto Rivero Valdeavellano –Former Political-Military Chief of the provinces of Huanta and La Mar-, and Augusto Gabilondo García del Barco –Former Chief of the Countersubversive Base of the province of Huanta- for being alleged co-perpetrators of the crime against life, body and health in the form of murder of more than 50 people and of the crime against humanity in the form of forced disappearance, to the detriment of several people, including Mr. Tenorio Roca.

229. The Court also notes that, in said investigation, on May 2, 2011, the First Supraprovincial Criminal Court of Lima understood that it should be confirmed that those accused of the crime of forced disappearance of persons had maintained their public positions at the time Law No. 26926 entered into force, which criminalized the crime of forced disappearance (and crimes against humanity in general) – that is, on February 22, 1998-, in accordance with the scope established by the Supreme Court of Justice of the Republic of Peru in its Plenary Agreement No. 9-

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<sup>275</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 102.

<sup>276</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, paras. 103 and 104.

<sup>277</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 105.

<sup>278</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 108.

<sup>279</sup> Cf. *Case of Gómez Palomino v. Peru. Supervision of Compliance with Judgment*. Resolution issued by the Court Inter-American Court on July 5, 2011, Considering clause 36.

<sup>280</sup> Plenary Agreement No. 9-2009/CJ-116 of November 13, 2009, foundation 15, paragraph c (evidence file, volume XI, annex 21 to the State's final arguments brief, folio 5279).

2009/CJ-116 (*suprapara.* 107). On August 11, 2011, the First Supraprovincial Criminal Prosecutor of Ayacucho argued that said hermeneutics was contrary to international human rights law and, in particular, to the criteria established by this Court in the Compliance Monitoring Resolution issued in the case *Gomez Palomino*. Therefore, the nature of the crime should be considered and it was not necessary to take into account whether they had the status of civil servant or public servant at the time the aforementioned law entered into force (*suprapara.* 108). Accordingly, on December 16, 2011, the First Supra-provincial Criminal Court of Lima issued an Expanding Order to Open the Investigation and opened an investigation against the three denounced for the crime against humanity in the form of forced disappearance, to the detriment of thirteen people, among them Mr. Rigoberto Tenorio Roca (*suprapara.* 109). The aforementioned Court considered that it was appropriate to deviate from Plenary Agreement No. 9-2009/CJ-116 in compliance with the guidelines established by the Constitutional Court and the Inter-American Court regarding the obligation to investigate serious violations of human rights and, in particular, under the understanding that the crime of forced disappearance "extends beyond their situation as a public official or servant and that it only ceases when this duty to inform (the whereabouts of the victim) is satisfied."<sup>281</sup>.

230. From the foregoing, it can be inferred that, although one of the jurisdictional decisions was intended to reaffirm one of the extremes of Plenary Agreement No. 9-2009/CJ-116 that this Court has highlighted as contrary to the conventional parameters (*suprapara.* 227), as a result of the new request of the Prosecutor's Office, the Investigating Judge opened the investigation regarding the three defendants in accordance with the international obligations to which Peru committed itself and with the criteria of conventionality emanating from this Court.

231. Therefore, due to a timely and correct control of conventionality, in the specific case the inadequacy of the criminal offense of forced disappearance and of certain points of the Plenary Agreement No. 9-2009/CJ-116 to the conventional parameters did not materialize in a specific element of obstruction in the effective development of the investigations or proceedings opened for the forced disappearance of Mr. Tenorio Roca, even when the fact that they could be invoked by the accused is latent. two or other state authorities, since it "continues to be an interpretative criterion issued by the Supreme Court of Justice [which,] in principle, lower court judges would be called upon to apply as a valid interpretation criterion[,] with the burden of having to argue the reasons in case of straying from such a guideline", as the Commission highlighted.

232. Indeed, the determination for the specific case does not rectify or invalidate the fact that the classification that continues to be in force for the crime of forced disappearance of persons in Article 320 of the Penal Code, and its interpretation by means of Plenary Agreement No. 9-2009/CJ-116, does not adapt to international parameters and could potentially constitute a source of impunity in cases of forced disappearance of persons, especially in those cases such as the present one in which the victim has been involved for decades. disappeared<sup>282</sup>.

233. Consequently, this Court concludes that as long as Article 320 of the Criminal Code is not correctly adapted to international standards, the State continues to fail to comply with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

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<sup>281</sup> Expanding order to open the investigation issued by the First Supraprovincial Criminal Court of Lima on December 16, 2011 (evidence file, tome XI, annex 5 to the State's final arguments brief, folio 5124).

<sup>282</sup> Cf. *Case of Osorio Rivera and Family v. Peru*, *supra*, paras. 207 to 210.

## **F. reasonable term**

### *F.1 Arguments of the parties and the Commission*

234. The **Commission** indicated that in accordance with inter-American jurisprudence, the right of access to justice requires that the facts being investigated and, where appropriate, the corresponding criminal responsibilities be determined within a reasonable time, therefore, in view of the need to guarantee the rights of the affected persons, a prolonged delay may constitute, by itself, a violation of judicial guarantees; coupled with the fact that the breach of the obligation to provide justice and truth within a reasonable time extends, likewise, to the failure to determine the whereabouts of Rigoberto Tenorio Roca. In addition, he indicated that he does not provide an explanation that justifies that the investigation stage has not advanced, much less the lack of a firm decision.

235. In turn, the **representatives** they pointed out that more than 30 years have passed since the events occurred and they still have not determined the DNA results regarding the graves found in 2009. They added that the fact that the process was declared complex was a direct consequence of not acting in a timely manner in 1984. They argued that the procedural inactivity was due to the provisions of Laws Nos. 26492 and 26479, since it was not until 2003 that the investigations into the facts were reactivated. The representatives concluded that the reasons for the detention of Mr. Tenorio Roca are still unknown and the facts remain unpunished, also failing to comply with his obligations under Article I of the Inter-American Convention on Forced Disappearance of Persons.

236. The **State** stated that the term between 1984 and 2001 cannot be considered for the following two reasons: (i) Peru has already been penalized on several occasions by the trial system of the 1990s, and (ii) actions have already been taken to make the national trial system compatible with "international standards." The State argued that the calculation of the reasonable time since October 10, 2006, the date on which the First Supraprovincial Criminal Prosecutor of Ayacucho filed a complaint in the current proceeding, should be verified. Regarding the extensions of the investigation stage, the State stated that they were in order to gather the evidence and essential elements to specify an accurate criterion on the commission of the crime and establish the degree of responsibility of the perpetrators.

### *F.2 Considerations of the Court*

237. This Court has indicated that the right of access to justice is not exhausted with the processing of internal proceedings, but that this must also ensure, within a reasonable time, the right of the alleged victim or his next of kin to do everything necessary to find out the truth of what happened and to punish those possibly responsible.<sup>283</sup> Therefore, in view of the need to guarantee the rights of the injured parties, a prolonged delay may itself constitute a violation of judicial guarantees.<sup>284</sup>

238. Pursuant to its reiterated jurisprudence, this Court has considered four aspects to determine compliance with the general guarantee of reasonable time established in Article 8(1) of the American Convention: the complexity of the matter; the conduct of the authorities; the procedural activity of the interested party<sup>285</sup>, and the affectation generated in the legal situation of the person

<sup>283</sup> Cf. *Case of 19 Tradesmen v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 188, and *Case of Osorio Rivera and family v. Peru*, supra, para. 200.

<sup>284</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Quispialaya Vilcapoma v. Peru*, supra, para. 177.

<sup>285</sup> Cf. *Case of Suárez Rosero v. Ecuador*. Background. Judgment of November 12, 1997. Series C No. 35, para. 72, and

involved in the process<sup>286</sup>. However, this rule must be analyzed in each specific case. Therefore, the relevance of applying the four aforementioned criteria to determine the reasonableness of the term of a process depends on the particular circumstances.

239. In the case *Tarazona Arrieta et al. v. Peru*, the Inter-American Court affirmed that "[w]hile it is true that in general terms the Court must consider the overall duration of a proceeding in order to analyze its reasonable term, in certain particular situations a specific assessment of its different stages may be pertinent."<sup>287</sup> In any case, it is up to the State to demonstrate the reasons why a process or set of processes have taken a determined period that exceeds the limits of the reasonable time. If it does not prove it, the Court has broad powers to make its own estimate in this regard.<sup>288</sup>

240. Regarding the State's argument that it seeks to have the analysis of the reasonable time period carried out as from the year 2006, the Court considers that in the present case it is appropriate to make a global analysis of the various processes for the purposes of the analysis of the reasonable time period, taking into account that the termination of the ordinary processes of the 1980s was irregular in that the military jurisdiction oversaw it in violation of the American Convention. Likewise, the amnesty law was applied, which was also declared incompatible with the American Convention, in such a way that for 8 years no type of investigation was carried out into the facts related to the disappearance of Mr. Tenorio Roca. However, although the ongoing investigation that was initiated in 2003 was declared complex (*supra* para. 111), the Court considers that there has been an excessive prolongation of the investigation stage, without having required all the procedures leading to the investigation of the facts, determination of the whereabouts of the victim and identification of those responsible in the terms set forth *supra*.

241. In short, the Court notes that, more than 32 years after the execution of the facts began and 13 years after the last investigation began in the ordinary jurisdiction, the criminal proceeding continues in its early stages, without identifying, prosecuting, and eventually punishing all the possible perpetrators, which has excessively exceeded the term that can be considered reasonable for these purposes. Based on the foregoing, the Court considers that the State has not carried out serious, diligent, and exhaustive investigations, within a reasonable time, into the facts concerning the forced disappearance of Rigoberto Tenorio Roca, in violation of Article 8(1) of the American Convention and Ib) of the Inter-American Convention on Forced Disappearance of Persons.

## ***g. Right to know the truth***

### *G.1 Arguments of the parties and the Commission*

242. The **representatives** They argued that the investigations into the forced disappearance of Rigoberto Tenorio Roca are still in the investigation stage, without proceeding to the prosecution stage against any of the alleged perpetrators of the events. They considered that, although the State promoted, based on the work of the Truth and Reconciliation Commission, a new investigation into the present facts, it is still in its infancy, the reasons for his detention are unknown, and the whereabouts of his remains are not known, which constitutes a serious violation of the right of the next of kin to know the truth and, likewise, the breach of

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*Case of Quispialaya Vilcapoma v. Peru, supra*, para. 178.

<sup>286</sup> *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*, Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 178.

<sup>287</sup> *Case of Tarazona Arrieta et al. v. Peru, supra*, para. 100.

<sup>288</sup> *Cf. Case of Anzualdo Castro v. Peru, supra*, para. 156, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 178.

the obligation to combat the situation of impunity in the instant case, in violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Rigoberto Tenorio Roca and his next of kin.

### *G.2 Considerations of the Court*

243. The Court has determined that every person, including the next of kin of the victims of serious human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society must be informed of everything that happened in relation to said violations.<sup>289</sup> The Inter-American Court has considered the content of the right to know the truth in its jurisprudence, particularly in cases of forced disappearance<sup>290</sup>, which has been systematized in the case of the *Peasant Community of Santa Bárbara v. Peru*<sup>291</sup>.

244. Although the right to know the truth has been fundamentally framed within the right of access to justice<sup>292</sup>, it is broad in nature and its violation may affect different rights enshrined in the American Convention<sup>293</sup>, depending on the context and particular circumstances of the case. In this case, more than 32 years after the forced disappearance of Mr. Tenorio Roca began, the State has not yet clarified everything that happened, nor determined the corresponding responsibilities, and uncertainty remains as to whether the remains found and those that could still be found in other graves belong to the victim in this case. In this regard, it is necessary to highlight that in the context of forced disappearances, the right to know the whereabouts of the disappeared victims constitutes an essential component of the right to know the truth. Uncertainty about what happened to their loved ones is one of the main sources of suffering

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<sup>289</sup> *cf. Case of Trujillo Oroza v. Bolivia. Reparations and Costs*, Judgment of February 27, 2002, Series C No. 92, para. 100, and *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 264.

<sup>290</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 181; *Case of Chitay Nech et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*, Judgment of May 25, 2010, Series C No. 212, para. 206; *Case of Gelman vs. Uruguay and Background and Repairs*, Judgment of February 24, 2011, Series C No. 221, paras. 243 and 244; *Case of Uzcátegui et al. v. Venezuela. Background and Repairs*, Judgment of September 3, 2012, Series C No. 249, para. 240; *Case of Osorio Rivera and Family v. Peru, supra*, para. 220; *Case of the La Rochela Massacre v. Colombia, supra*, para. 147; *Case of Anzualdo Castro v. Peru, supra*, paras. 119 and 120, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs*, Judgment of October 25, 2012, Series C No. 252, para. 298. In one case, said consideration was made within the obligation to investigate ordered as a measure of reparation. *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*, Judgment of September 26, 2006, Series C No. 154, para. 148. In addition, in other cases it has been established that it is subsumed in Articles 8.1, 25 and 1.1 of the Convention, but said consideration has not been included within the motivation of the respective operative paragraph. *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs*, Judgment of November 24, 2011, Series C No. 237, para. 291; *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. 263, and *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs*, Judgment of August 31, 2011, Series C No. 232, para. 173.

<sup>291</sup> *Cf. Case of the Rural Community of Santa Bárbara v. Peru, supra*, paras. 262 to 266.

<sup>292</sup> *cf. See, inter alia, Case of Velásquez Rodríguez v. Honduras, supra*, para. 181; *Case of Bámaca Velásquez Vs. Guatemala. Background*, Judgment of November 25, 2000, Series C No. 70, para. 201; *Case of Barrios Altos v. Peru. Background, above*, para. 48; *Case of Almonacid Arellano et al. v. Chile, supra*, para. 148; *Case of La Cantuta v. Peru, supra*, para. 222; *Case of Heliodoro Portugal v. Panama, supra*, paras. 243 and 244, and *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*, Judgment of April 3, 2009, Series C No. 196, para. 117.

<sup>293</sup> In this sense, in his study on the right to know the truth, the United Nations High Commissioner for Human Rights noted that various international declarations and instruments have recognized the right to know the truth linked to the right to obtain and request information, the right to justice, the duty to combat impunity for human rights violations, the right to an effective judicial remedy and the right to private and family life. In addition, in relation to the next of kin of the victims, it has been linked to the right to integrity of the victim's next of kin (mental health), the right to obtain reparation in cases of serious human rights violations, the right not to be subjected to torture or ill-treatment and, in certain circumstances, *cf. Report of the Office of the United Nations High Commissioner for Human Rights. Study on the right to the truth*, UN Doc. E/CN.4/2006/91 of January 9, 2006.

mental and moral health of the relatives of the disappeared victims. By virtue of the foregoing, the Court declares the violation of the right to know the truth, to the detriment of the next of kin of Mr. Rigoberto Tenorio Roca. In this case, as in others, said violation falls within the right of access to justice.

#### ***H. Conclusion***

245. Based on the above considerations, the Court concludes that the State violated the guarantee of the natural judge regarding the investigations related to the forced disappearance of Mr. Rigoberto Tenorio Roca that were processed before the military jurisdiction, for which Peru is responsible for the violation of Article 8(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Rigoberto Tenorio Roca and his next of kin.

246. In addition, the Court concludes that the investigations carried out before the ordinary jurisdiction were not diligent or effective in determining the whereabouts of Mr. Rigoberto Tenorio Roca, establishing what happened, identifying and punishing those responsible, nor did they respect the guarantee of a reasonable period of time. Consequently, the Court concludes that due to the absence of an effective investigation of the facts, prosecution, and punishment of those responsible, the State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8.1 and 25.1 of the American Convention, in relation to Articles 1.1 thereof and Ib) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rigoberto Tenorio Roca and his next of kin.

247. More than 32 years after the forced disappearance of Mr. Rigoberto Tenorio Roca, the full truth about the facts and his whereabouts are still not known. Therefore, in the present case, the State is responsible for the violation of the right of the next of kin to know the truth, through the investigation and trial that are provided for in Articles 8 and 25.1 of the Convention.

248. Likewise, with regard to the existing regulatory framework, the Court concludes that as long as Article 320 of the Peruvian Criminal Code is not correctly adapted to the definition of forced disappearance according to international standards, the State continues to fail to comply with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

249. Finally, with regard to the existing regulatory framework, the Court concludes that during the period in which the amnesty laws were applied, the State failed to comply with its obligation to adapt its domestic law to the Convention, provided for in Article 2 of the American Convention, in relation to Articles 8(1) and 25(1) of the Convention, to the detriment of Rigoberto Tenorio Roca and his next of kin.

#### **VII-3**

#### **RIGHT TO PERSONAL INTEGRITY IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE THE RIGHTS, TO THE PREJUDICE OF THE FAMILY OF RIGOBERTO TENORIO ROCA**

250. In this chapter, the Court will present the arguments of the parties and the Inter-American Commission, and then proceed to rule on the merits of the matter regarding the alleged violations of Article 5 of the American Convention, to the detriment of the next of kin of Rigoberto Tenorio Roca.

#### ***TO. Arguments of the parties and the Commission***

251. The **Commission** considered that in light of the forced disappearance of Rigoberto Tenorio Roca, the State had the obligation to guarantee the right to personal integrity of his next of kin through effective investigations aimed at clarifying the facts and providing truth, justice, and reparation. However, the breach of said obligation caused suffering and anguish to the next of kin of Mr. Tenorio Roca. Likewise, the next of kin took multiple steps to find out the whereabouts of Mr. Tenorio Roca without obtaining the expected result. Consequently, the Commission concluded that in the present case the State violated the right to personal integrity of the mother, brother, wife, and children of Rigoberto Tenorio Roca.

252. The **representatives** joined the arguments outlined by the Commission. Despite the steps taken by the next of kin, to date they have not had the expected result. The representatives concluded that the violation of the right to mental and moral integrity of the next of kin of Rigoberto Tenorio Roca is a direct consequence of his disappearance, of the uncertainty that the family has experienced and is experiencing regarding what happened to the victim, of the actions carried out against the next of kin after reporting the facts, and of the impunity in which the disappearance is found more than 32 years after the detention occurred.

253. The **State** indicated that the right to integrity of next of kin could be affected by the presumed disappearance of their next of kin, but that the origin of this violation was based on the international responsibility of the State. In this sense, the State argued that, since international responsibility for the alleged forced disappearance has not been proven, Peru is not responsible for the violation of the right to personal integrity, contained in Article 5 of the Convention, to the detriment of the next of kin of Mr. Rigoberto Tenorio Roca.

### ***B. Considerations of the Court***

254. This Court has considered that, in cases that involve the alleged forced disappearance of persons, it is possible to understand that the violation of the right to mental and moral integrity of the next of kin of the victim is a direct consequence of this phenomenon, which causes them severe suffering due to the fact itself, which is increased, among other factors, by the constant refusal of the state authorities to provide information about the whereabouts of the victim or to carry out an effective investigation to clarify what happened.<sup>294</sup> These damages lead to the presumption of damage to the mental and moral integrity of the next of kin<sup>295</sup>. In previous cases, the Court has established that said presumption is established *juris tantum* with respect to mothers and fathers, daughters and sons, spouses, partners and permanent partners, as long as it corresponds to the particular circumstances of the case<sup>296</sup>. However, in a recent sentence it considered, in the framework of a forced disappearance, said presumption is also applicable to the sisters and brothers of the disappeared victims, unless the contrary is proven by the specific circumstances of the case.<sup>297</sup>

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<sup>294</sup> Cf. *Case of Blake v. Guatemala. Background*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 274.

<sup>295</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 119, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 274.

<sup>296</sup> Cf. *Case of Blake v. Guatemala. Bottom, above*, para. 114, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 274.

<sup>297</sup> Cf. *Case of Gudiel Álvarez et al. ("Military Newspaper") v. Guatemala*, *supra*, para. 286, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 274.

255. In order to measure the effects verified in the present case, the Court notes that from the statements and expert opinion received<sup>298</sup>It follows that the next of kin of Mr. Tenorio Roca saw their personal integrity affected to one extent or another as a result of the abrupt disappearance of their loved one and the sustained uncertainty about his whereabouts, which has caused them: (i) personal, physical, and emotional consequences, and an irreversible alteration of their life projects; (ii) the breakdown of family dynamics, accompanied by a situation of precariousness of available economic resources; (iii) alteration of the mourning process, perpetuating the suffering and uncertainty, due to the lack of clarification of what happened and the fact that the hope of finding him remains latent since the body has not been recovered; and (iv) displacement of the entire family to Lima<sup>299</sup>, which implied for their children a notorious decrease in their chances of developing their human capacities and potentialities, as well as the submission of the family to discriminatory treatment due to stereotyped associations for being originally from the province of Ayacucho.<sup>300</sup>

256. On the other hand, the jurisprudence of the Court has established that the deprivation of the truth about the whereabouts of a victim of forced disappearance entails a form of cruel and inhuman treatment for the close relatives.<sup>301</sup> In addition, the constant refusal of the state authorities to provide information about the whereabouts of the victims or to initiate an effective investigation to clarify what happened has been considered, by the Court, as a cause of increased suffering of the next of kin<sup>302</sup>. The circumstances of this case show that the next of kin affected by the disappearance of Mr. Tenorio Roca see their suffering aggravated by the deprivation of the truth, both regarding what happened and the whereabouts of the victim, and by the lack of collaboration of the State authorities in order to establish said truth, which, therefore, aggravated the violation of the right to personal integrity of the next of kin.

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<sup>298</sup> *cf.* Statement rendered before a notary public by Carlos Alberto Jibaja Zárate on February 3, 2016 (evidence file, volume X, *affidavits*, folio 4987 to 5002). In said expert opinion, Cipriana Huamaní Anampa (wife), Jaime Tenorio Huamaní (son), Marleni Tenorio Huamaní (daughter), Gustavo Tenorio Huamaní (son), Walter Tenorio Huamaní (son), Jorge Tenorio Huamaní (son), Maritza Roxana Tenorio Huamaní (son), Ingrid Tenorio Huamaní (daughter), and Edith Tenorio Huamaní (son) were evaluated. (daughter). *cf.* Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4963 to 4970); Statement rendered before a notary public by Jorge Rigoberto Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4971 to 4976), and Statement made by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>299</sup> Regarding the effects of her husband's disappearance, Mrs. Huamaní indicated that five months after her husband's disappearance, by her decision, she and all her children moved to Lima. That "[t]he early years was (*sic*) very hard, sad and traumatic for [her] and for [her] children, a trauma from which [they have] not recovered until now, from which [they] had no treatment." *cf.* Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, tome I, annex 22 to the merits report, folio 528). *See also*, Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4963 to 4970) and Statement made before a notary public by Jorge Rigoberto Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4971 to 4976).

<sup>300</sup> Gladys Marleni Tenorio Huamní, who was 14 years old when her father disappeared, stated that when they arrived in Lima "[they were] discriminated against by their own classmates when they knew they [were] from the province; even worse (*sic*) when [they said] that they came from Ayacucho, [because] they branded them as terrorists or sons of terrorists." He also indicated that this "added to the trauma and pain of losing [his] father, and the radical change in life that [they suffered] from one day to the next [...] of going to a completely unknown place, without counting any resources [...] meant that he could not [concentrate] on studies due to depression. According to Gladys Marleni, she "[t]all [hers] life project of hers that she had as a child [,] she disappeared along with [hers] father of hers." Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, page 4966).

<sup>301</sup> *Cf. Case of Trujillo Oroza v. Bolivia. Reparations and Costs, supra*, para. 114, and *Case of Rochac Hernández et al. v. El Salvador, supra*, para. 122.

<sup>302</sup> *Cf. Case of Blake v. Guatemala. Background, supra*, para. 114, and *Case of the Rural Community of Santa Bárbara v. Peru, supra*, para. 274.



257. The link between the suffering of the next of kin and the violation of the right to know the truth is clear, which illustrates the complexity of forced disappearance and the multiple effects it has caused. The next of kin present physical and psychological scars and the events have produced alterations in the family dynamics and their life plans. These affectations, fully included in the complexity of forced disappearance, will be projected over time as long as the verified impunity factors persist and the lack of clarification of the final whereabouts of the disappeared victim<sup>303</sup>.

258. Consequently, the Court considers that, as a direct consequence of the disappearance, the next of kin of Rigoberto Tenorio Roca have suffered profound suffering, anxiety, and anguish to the detriment of their mental and moral integrity, constituting a form of cruel and inhuman treatment. Consequently, the Court concludes that the State violated the right to personal integrity established in Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of Rigoberto Tenorio Roca, namely, his wife, Cipriana Huamaní Anampa, his children Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní,

## VIII REPAIRS (Application of Article 63.1 of the American Convention)

259. Based on the provisions of Article 63.1 of the American Convention<sup>304</sup>, the Court has indicated that any violation of an international obligation that has produced damage entails the duty to adequately repair it and that this provision includes a customary norm that constitutes one of the fundamental principles of contemporary International Law on the responsibility of a State<sup>305</sup>.

260. The reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the previous situation. If this is not feasible, as occurs in most cases of human rights violations, the Court will determine measures to guarantee the violated rights and repair the consequences that the violations produced.<sup>306</sup> Therefore, the Court has considered the need to grant various reparation measures, in order to compensate the damages in an integral manner, therefore, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition are of special relevance for the damages caused.<sup>307</sup>

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<sup>303</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 103, and *Case of Rochac Hernández et al. v. El Salvador*, *supra*, para. 124.

<sup>304</sup> Article 63.1 of the Convention provides that “[w]hen it decides that there has been a violation of a right or freedom protected in [the] Convention, the Court will order that the injured party be guaranteed the enjoyment of his violated right or freedom. It will also provide, if appropriate, that the consequences of the measure or situation that has configured the violation of those rights and the payment of fair compensation to the injured party be repaired.

<sup>305</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 121.

<sup>306</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, para. 26, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 122.

<sup>307</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of Duque v. Colombia*, *supra*, para. 195.

261. The Court has established that the reparations must have a causal link with the facts of the case, the declared violations, the proven damages, as well as the measures requested to repair the respective damages. Therefore, the Court must observe said concurrence to pronounce duly and in accordance with the law.<sup>308</sup>

262. In consideration of the violations of the Convention declared in the previous chapters, the Court proceeds to analyze the claims presented by the Commission and the representatives, in light of the criteria established in its jurisprudence in relation to the nature and scope of the obligation to make reparation, in order to order the measures aimed at repairing the damage caused to the victims.<sup>309</sup>

### **A. Injured Party**

263. An injured party, under the terms of Article 63.1 of the Convention, is considered to be those who have been declared victims of the violation of any right enshrined therein. Therefore, this Court considers as the “injured party” Rigoberto Tenorio Roca, Cipriana Huamaní Anampa, Isidora Roca Gómez, Juan Tenorio Roca, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní, who in their capacity as victims of the violations declared in this Judgment, will be considered beneficiaries of the reparations ordered by the Court.

### **B. Obligation to investigate the facts and identify, prosecute and, where appropriate, punish those responsible, as well as to determine the whereabouts of the victim**

#### **1. Investigation, determination, prosecution and, where appropriate, punishment of all those responsible**

264. The **Commission** requested the Court to order the State to carry out the internal procedures related to the declared human rights violations and conduct the criminal proceedings for the crime of forced disappearance to the detriment of Mr. Tenorio Roca currently in progress, impartially, effectively and within a reasonable time, in order to fully clarify the facts, identify all those responsible and impose the corresponding sanctions.

265. The **representatives** They requested the Court to order Peru to carry out, within a reasonable time, a complete, impartial, and effective investigation in order to identify, prosecute, and punish all the perpetrators and masterminds of the human rights violations with penalties proportional to the seriousness of the acts committed against Rigoberto Tenorio Roca.

266. The **States** stated that, to date, there is an open criminal proceeding (File No. 109-2011) followed against Adrián Huamán Centeno and others for the Crime against Humanity in the form of Forced Disappearance, to the detriment of Rigoberto Tenorio Roca and others before the First Supraprovincial Criminal Court. This process is in the instruction stage. The State indicated that the Public Prosecutor's Office and the Judiciary are continuing with the processing of the criminal proceeding, and that various procedures and other procedural acts have already been ordered to clarify the facts of this case.

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<sup>308</sup> Cf. *Case of Ticona Estrada v. Bolivia*, *supra*, para. 110, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 123.

<sup>309</sup> Cf. *Case of Velásquez Rodríguez. Reparations and Costs*, *supra*, paras. 25 to 27, and *Case of Maldonado Ordoñez Vs. Guatemala*, *supra*, para. 124.

267. This Court declared in this Judgment, *inter alia*, that the investigations carried out before the ordinary courts were not diligent or effective in determining the whereabouts of Mr. Tenorio Roca, establishing what happened, identifying and punishing those responsible, nor did they respect the guarantee of a reasonable time (*suprapara*. 246). In addition, he maintained that in facts such as those alleged in this case, it is reasonable to consider that there are degrees of responsibility at different levels (*suprapara*. 188) and, however, of all the investigations carried out, only the possible responsibility of four people for the events that occurred was considered, all to the degree of participation of mediate authorship, without conducting investigations into the possible participation of other people in the events. In addition, the whereabouts of the only defendant in the investigations opened during the 1980s are unknown (*suprapara*. 187), without the State taking any steps to find him, even with the indications that he would still be alive. In addition to this, the current criminal proceedings, followed against three of those allegedly implicated in the events that occurred in Huanta and included in the CVR report, have not been able to proceed beyond the investigation phase (*suprapara*. 123).

268. Bearing in mind that a criminal proceeding is currently open that goes beyond the scope of this case, but that at the same time includes an investigation into the disappearance of Rigoberto Tenorio Roca, as well as the jurisprudence of this Court<sup>310</sup>, the Court establishes that the State must continue effectively and with the greatest diligence the investigations and criminal proceedings in progress, as well as open those that are necessary in order to identify, prosecute and, where appropriate, punish all those responsible for the forced disappearance of Rigoberto Tenorio Roca within a reasonable period of time, in order to establish the full truth of the facts in accordance with the criteria indicated on investigations in cases of forced disappearances.<sup>311</sup>, and removing all obstacles that maintain impunity<sup>312</sup> in this case. Due diligence in the investigation implies that all the corresponding state authorities are obliged to collaborate in the collection of evidence, for which reason they must provide the judge, prosecutor or other judicial authority with all the information required and refrain from acts that imply obstruction to the progress of the investigative process. In particular, the State must:

- t) carry out the pertinent investigation(s) in relation to the facts of this case avoiding omissions in the collection of evidence and in the follow-up of logical lines of investigation;
- b) investigate with due diligence comprehensively covering the elements that they configure the forced disappearance;
- c) identify and individualize the material and intellectual authors of the disappearance forced from the victim;
- d) make sure that the authorities competent perform the research corresponding *ex officio*, and for this purpose they have at their disposal and use all the logistical and scientific resources necessary to collect and process the evidence and, in particular, have the powers to access the pertinent documentation and information to investigate the facts denounced and promptly carry out those actions and essential inquiries to clarify what happened to the disappeared person herein.

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<sup>310</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 174, and *Case of Osorio Rivera and family v. Peru, supra*, para. 244.

<sup>311</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 174, and *Case of Osorio Rivera and family v. Peru, supra*, para. 244.

<sup>312</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101*, para. 277, and *Case of Osorio Rivera and family v. Peru, supra*, para. 244.

case;

and) because it is a serious violation of human rights, and in consideration of the permanent nature of forced disappearance whose effects do not cease until the whereabouts of the victim are established or their remains are identified, the State must refrain from resorting to figures such as amnesty for the benefit of the perpetrators, as well as any other similar provision, prescription, non-retroactivity of criminal law, *res judicata*, *ne bis in idem* any similar exemption from liability, to excuse yourself from this obligation<sup>313</sup>, and

F) guarantee that investigations into the facts constituting the disappearance of the present case are kept, at all times, under the knowledge of the ordinary jurisdiction.

269. Pursuant to its consistent jurisprudence, the Court reiterates that the State must ensure full access and capacity to act for the victims or their next of kin at all stages of the investigation and prosecution of those responsible. Said participation must have as its purpose access to justice and knowledge of the truth of what happened. Additionally, the results of the corresponding processes must be published so that Peruvian society is aware of the facts that are the subject of this case, as well as those responsible.<sup>314</sup>

## ***2. Determination of the whereabouts of the victim***

270. The **Commission** requested the State to fully, impartially, and effectively investigate the whereabouts of Rigoberto Tenorio Roca, and if it is established that the victim is not alive, adopt the necessary measures to deliver his remains to the next of kin.

271. The **representatives** requested that the State carry out with due diligence the necessary actions aimed at locating and delivering the remains of Rigoberto Tenorio Roca to his next of kin, so that they can carry out the funeral rites according to their customs and beliefs. In addition to this, they argued that the State must provide the necessary conditions to transfer and bury said remains in the place chosen by their next of kin, at no cost to them.

272. The **State** indicated that it has already coordinated with the Laboratory of Molecular Biology and Genetics of the Institute of Legal Medicine of the Public Ministry, the Laboratory of Forensic Investigations of Ayacucho and Huancavelica of the Institute of Legal Medicine to collaborate closely with the location of skeletal remains, with information processing, comparison of samples and identification of human remains tending to their subsequent delivery by the Court. The State also indicated that the procedures carried out have been aimed at verifying whether all the pertinent examinations have been carried out to identify the skeletal remains exhumed in the Pucayacu graves, where the remains of Mr. Rigoberto Tenorio Roca could be found. Specifically, *ante mortem* and the extraction of DNA samples from the next of kin of the aggrieved, carried out from March 9 to 23, 2009, it was concluded that there was no comparison, therefore Rigoberto Tenorio Roca is not among those identified.

273. In the present case, the whereabouts of Mr. Rigoberto Tenorio Roca are still unknown and the State has not carried out to date all the measures tending to determine the whereabouts of the

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<sup>313</sup> Cf. *Case of Barrios Altos v. Peru. Background*, above, para. 41, and *Case of Osorio Rivera and family v. Peru*, supra, para. 244.

<sup>314</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*, Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of the Rural Community of Santa Bárbara v. Peru*, supra, para. 290.

victim. The Court emphasizes that the victim disappeared more than 32 years ago, for which reason it is a fair expectation of his next of kin that his whereabouts be identified, which constitutes a measure of reparation and, therefore, generates the correlative duty for the State to satisfy it.<sup>315</sup> In turn, this allows family members to alleviate the anguish and suffering caused by such uncertainty.<sup>316</sup>

274. Receiving the body of a person who has been forcibly disappeared is of the utmost importance for their relatives, since it allows them to bury it according to their beliefs, as well as close the mourning process that they have been experiencing throughout these years.<sup>317</sup> Additionally, the Court considers that the remains are proof of what happened and, together with the place where they were found, can provide valuable information about the perpetrators of the violations or the institution to which they belonged.<sup>318</sup>

275. Consequently, it is necessary for the State to make exhaustive search efforts through the appropriate judicial and/or administrative channels, to determine the whereabouts of Rigoberto Tenorio Roca as soon as possible, which must be carried out in a systematic and rigorous manner, with adequate and suitable human, technical, and scientific resources. The aforementioned proceedings should be reported to his family and, if possible, seek his presence.

276. In the event that, after the procedures carried out by the State, the victim is found dead, the mortal remains must be delivered to his next of kin, after verification of identity, as soon as possible and at no cost to them. In addition, the State must cover the funeral expenses, if applicable, in agreement with their relatives.<sup>319</sup>

### ***C. Measures of rehabilitation, satisfaction and guarantees of non-repetition***

277. The Court takes note that the State reported on the existence of Law No. 28592 of July 20, 2005 and its Regulations (Supreme Decree No. 015-2006-JUS) by which the regulatory framework of the Comprehensive Reparations Plan (hereinafter "PIR") was established for the victims of violence that occurred between the years 1980 and 2000 in Peru, in accordance with the conclusions and recommendations of the Report of the TRC. The Court notes that, in accordance with Article 3 of the aforementioned law, "victims are those persons or groups of persons who have suffered acts or omissions that violate Human Rights norms, such as forced disappearance, kidnapping, extrajudicial execution, murder, forced displacement, arbitrary detention, forced recruitment, torture, rape or death, as well as the next of kin of the persons killed and disappeared during the period included in article 1 of this Law". In addition, Article 6, subparagraph a), states that individual beneficiaries are "[t]he next of kin of the disappeared or deceased victims: [which] includes the spouse or cohabitant, the children and the parents of the disappeared or deceased victim." Likewise, the PIR is currently made up of seven programs, namely: the program for the restitution of citizen rights, the education reparations program, the health reparations program, the reparations program [which] includes the spouse or cohabitant, the children and the parents of the disappeared or dead victim." Likewise, the PIR is currently made up of seven programs, namely: the program for the restitution of citizen rights, the education reparations program, the health reparations program, the reparations program [which] includes the spouse or cohabitant, the children and the parents of the disappeared or dead victim." Likewise, the PIR is currently made up of seven programs, namely: the program for the restitution of citizen rights, the education reparations program, the health reparations program, the reparations program

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<sup>315</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 295.

<sup>316</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 155, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 295.

<sup>317</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 295.

<sup>318</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 245, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 295.

<sup>319</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*, *supra*, paras. 122 to 124, and *Case of the Peasant Community of Santa Bárbara v. Peru*, *supra*, para. 297.

collective, the symbolic reparations program, the program for the promotion and facilitation of housing access, and the economic reparations program.

278. Based on the aforementioned regulations on reparations, nine victims in the present case have been officially recognized as victims by the Reparations Council of Peru (CR) and as a consequence of this they are registered in the respective Single Registry of Victims (hereinafter "RUV"), and therefore they are beneficiaries of the PIR. In this regard, the State affirmed that seven children, the wife and Rigoberto Tenorio Roca himself had been registered in the RUV. It added that the registration of one of the daughters, Maritza Roxana Tenorio Huamaní, was pending, but that the Reparations Council reported that her case was in the approval process, being in the last phase of generating the RUV code, with which she would finally be recognized as a beneficiary of the Comprehensive Reparations Plan. However,

279. The Court notes that, from the information provided by the State to date, only nine of the 12 victims in this case had been registered in the RUV and one of these is in the process of registration, that is, nine people are recognized as victims and incorporated as beneficiaries of the PIR. Although the State has had the opportunity to make reparation at the domestic level for the violations declared in this Judgment, the information it provided does not show a definitive result to date, since it has not proven that any reparation measure pursuant to the PIR has been effectively granted to the victims to date. Therefore,

280. Based on all of the foregoing, it is up to the Court to order the measures of rehabilitation, satisfaction, and guarantees of non-repetition, as well as the corresponding compensatory indemnities for material and non-pecuniary damage, based on its own jurisprudence.

### **1. Rehabilitation**

281. The **Commission** stressed the need to implement an adequate psychosocial care program for the next of kin of the victims to repair the human rights violations declared in its Merits Report.

282. The **representatives** They asked the Court to order the State to guarantee free and permanent medical and psychological treatment for the next of kin of the victims, which must be provided by competent professionals, after determining the medical needs of each victim, and which must include the provision of the medications that are required, always ensuring the due participation of the victims in the process. They also indicated that the State should be responsible for other related expenses, such as the cost of transportation.

283. The **State** It stressed that international responsibility on the part of the State with respect to the facts denounced has not been proven. Likewise, it affirmed that the direct relatives of Mr. Rigoberto Tenorio Roca, upon being recognized as victims and incorporated as beneficiaries of the Comprehensive Reparations Plan (PIR), can access the various comprehensive reparation programs, and stated that in terms of reparations in health matters, coordination was carried out with the Comprehensive Health Insurance (SIS) requesting the registration of Mr. Rigoberto Tenorio Roca's wife and children in said program.

284. Having verified the damage suffered by the next of kin of Mr. Rigoberto Tenorio Roca (*supra* Chapter VII-3), the Court considers, as it has done in other cases<sup>320</sup>, that it is necessary to order a measure of reparation that provides adequate attention to the psychological and physical suffering suffered by the victims derived from the violations established in this Judgment. In order to contribute to the reparation of these damages, the Court establishes the obligation of the State to provide free, through its specialized health institutions, and in an immediate, adequate and effective manner, medical and psychological or psychiatric treatment, to the victims who request it, including the free supply of medicines that may be required, taking into consideration the suffering of each one of them.<sup>321</sup> Likewise, the respective treatments must be provided, as far as possible, in the centers closest to their places of residence.<sup>322</sup> in Peru for as long as necessary. When providing psychological or psychiatric treatment, the particular circumstances and needs of each victim must also be considered, so that collective, family and individual treatment is provided, according to what is agreed upon with each of them and after an individual evaluation.<sup>323</sup> The victims who request this measure of reparation, or their legal representatives, have a period of six months, counted from the notification of this Judgment, to inform the State of their intention to receive psychological or psychiatric care.<sup>324</sup> In turn, the State will have a period of two months, counted from the receipt of said request, to effectively provide the requested psychological or psychiatric care.

## 2. Satisfaction

### t) Publication and dissemination of the Judgment

285. The **Commission** requested the establishment and dissemination of the historical truth of the facts.

286. The **representatives** They asked the Court to order the State to publish, within a period of six months, at least the sections on context and proven facts, as well as the operative part of the judgment in the Official Gazette and in a newspaper with national circulation, as well as on the website *Web* of the Ministry of Justice in no more than three links from the main page, which is maintained until full compliance with the sentence.

287. The **State** indicated that in the eventual scenario that the Inter-American Court so requests in the judgment of the present case, the Peruvian State would not present any objection to the publication of the judgment, however, it considered that it would be sufficient to publish it on a website *Web* of a state entity, such as the Ministry of Justice and Human Rights.

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<sup>320</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*, *supra*, paras. 42 and 45, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 308.

<sup>321</sup> Cf. *Case of Heliodoro Portugal v. Panama. Supervision of Compliance with Judgment*. Order issued by the Inter-American Court on May 28, 2010, Considering clause 28, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 308.

<sup>322</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 308.

<sup>323</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 308.

<sup>324</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico*, *supra*, para. 253, and *Case of the Rural Community of Santa Bárbara v. Peru*, *supra*, para. 308.

288. The Court deems, as it has provided in other cases<sup>325</sup>, that the State must publish, within a period of six months, counted from the notification of this Judgment: a) the official summary of this Judgment prepared by the Court, once only, in the Official Gazette; b) the official summary of this Judgment prepared by the Court, once only, in a newspaper with wide national circulation, and c) this Judgment in its entirety, available for a period of one year, on a website *Web*official.

289. The State must immediately inform this Court once it proceeds to make each one of the publications ordered, regardless of the one-year term to present its first report provided in the seventeenth operative paragraph of the Judgment.

b) *Public act of recognition of international responsibility*

290. The **Commission** requested a public acknowledgment of international responsibility and a public apology for the violations declared in its merits report.

291. The **representatives** They requested that an act of public apology be held to dignify the memory of Rigoberto Tenorio Roca, to be carried out by the highest State authorities and to vindicate the long struggle followed by his relatives.

292. The **State** indicated that compliance with this recommendation is linked to the ongoing criminal proceedings, as soon as it determines the existence of violations of the human rights of Mr. Rigoberto Tenorio Roca and the responsibility of state officials. The State also indicated that, in previous cases, the Court has indicated that public apologies are not necessary because the Court's judgment itself is a form of reparation.

293. As it has done in other cases<sup>326</sup>, the Court finds it necessary, in order to repair the damage caused to the victims and to prevent events such as those in this case from being repeated, order the State to hold a public act of acknowledgment of international responsibility in relation to the facts of this case. Said act must refer to the human rights violations declared in this Judgment. Likewise, it must be carried out through a public ceremony in the presence of senior State officials and the victims of this case. The State must agree with the victims or their representatives on the modality of compliance with the public act of acknowledgment, as well as the particularities that are required, such as the place and date for its realization. For this, the State has a period of one year,

c) *Scholarships*

294. The **representatives** They requested that this Court order the State to grant a scholarship in a Peruvian public institution, for the benefit of the children of Rigoberto Tenorio Roca, that covers all the costs of their education, from the moment the beneficiaries request it from the State until the conclusion of their higher education, whether technical or university. They also requested that this reparation should be able to be transferred, according to the decision of the victim's children, to his children, that is, his grandchildren, due to the considerable time that has elapsed since his disappearance.

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<sup>325</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 79, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 129.

<sup>326</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 81, and *Case of Osorio Rivera and family v. Peru*, *supra*, para. 264.



295. The **State** stressed that its international responsibility for the facts denounced has not been proven. Regarding the request of the representatives to transfer it to the grandchildren of Mr. Rigoberto Tenorio Roca, the State indicated that on January 29, 2016 Supreme Decree No. 001-2016-JUS was promulgated, which modified article 18 of the Regulations of Law No. 28592, which creates the Comprehensive Reparations Plan (PIR), authorizing the holder of the right to reparations in education registered in the UK V, to transfer that right, for the only time and only to a family member in a direct descending line up to the second degree of consanguinity.

296. The Court recognizes that the forced disappearance of Rigoberto Tenorio Roca resulted in the loss of his family support, which has had serious repercussions on the lives of his children, who were of an academic age at the time of the events. From the statements rendered through *affidavits* by Gladys Marleni Tenorio Huamani<sup>327</sup> and Jorge Rigoberto Tenorio Huamani<sup>328</sup>, it can be seen that they identify the fact that they were unable to continue their studies as one of the greatest damages caused by the disappearance of their father. Likewise, in the expert opinion rendered by psychologist Carlos Alberto Jibaja Zárate, it was determined that what happened affected the academic and professional future of Mr. Tenorio Roca's children and that for most of them, having studied a higher degree would have been the way to perceive their personal aspirations as achieved, consolidating personal self-esteem based on academic-professional achievements.<sup>329</sup>

297. Therefore, the State must grant Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní a scholarship in a Peruvian public institution arranged between each child of Rigoberto Tenorio Roca and the State of Peru to study or train in a trade. Said scholarship will be awarded from the moment the beneficiaries request it from the State until the conclusion of their higher technical or university studies and must cover all expenses for the complete completion of said studies, including academic or educational material. Said scholarships must begin to become effective as soon as possible from the notification of this Judgment, so that the beneficiaries begin their studies in the following year, if they so wish. The victims or their legal representatives have a period of one year, counted from the notification of this Judgment, to inform the State of their intention to receive said scholarship.

298. Likewise, taking into account that more than 32 years have passed since what happened and, therefore, some of the children could no longer benefit from it, the Court deems it pertinent to order the State that, if requested by the children of Mr. Tenorio Roca, the right to this reparation be transferred by each one of them, for the one time and only to a relative in a direct line of descent up to the second degree of consanguinity, as established in the Comprehensive Reparations Program. The victims who wish to transfer this reparation measure, or their legal representatives, have a period of one year, counted from the notification of this Judgment, to inform the State of the person who will benefit from this measure.

### **3. Guarantees of non-repetition**

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<sup>327</sup> *cf.* Statement rendered before a notary public by Gladys Marleni Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4963 to 4970).

<sup>328</sup> *cf.* Statement rendered before a notary public by Jorge Rigoberto Tenorio Huamaní on February 5, 2016 (evidence file, volume X, *affidavits*, folios 4971 to 4976).

<sup>329</sup> *cf.* Statement rendered before a notary public by Carlos Alberto Jibaja Zárate on February 3, 2016 (evidence file, volume X, *affidavits*, folio 4987 to 5002).

to) *Adapt the criminal category of forced disappearance to international standards*

299. The **Commission** requested the adaptation of domestic legislation to inter-American standards regarding the classification and prosecution of the crime of forced disappearance of persons.

300. The **representatives** They asked the Court to order Peru to bring the criminal offense of forced disappearance into line with international standards, by reforming, as soon as possible, Article 320 of the Penal Code, given that said reform constitutes an essential measure to ensure that justice is obtained in this case. In addition, they requested the modification of the Plenary Agreement No. 9/2009 that establishes a temporary limitation to the criminal prosecution of the crimes of forced disappearance of persons.

301. The **State** indicated that the Supranational Prosecutor's Office sent a report to the Congress of the Republic in January 2012 regarding "General guidelines for the draft modification of the forced disappearance criminal offense" as a draft legislative amendment to article 320 of the Penal Code, in accordance with international treaties on the matter. In addition, it pointed out that on December 9, 2014, the opinion proposing the New Penal Code Law, which accumulates 152 bills, was approved. The crime of forced disappearance would be found in several books of this new Code. This opinion would already be found only for debate in the Plenary of Congress and for its subsequent approval by the President for its promulgation and publication.

302. In addition to this, the State reaffirmed that in the present case, the regulation of the criminal type of forced disappearance has not been an obstacle to the effective development of the investigations or proceedings opened for the alleged forced disappearance of Mr. Rigoberto Tenorio Roca, and highlighted the approval by the Congress of the Republic of the International Convention for the Protection of All Persons against Forced Disappearances of the United Nations through Legislative Resolution No. 29894 published on July 6, 2012. Finally, with respect to Plenary Agreement No. 9-2009/CJ-116 adopted by the Supreme Court of Justice of the Republic, the State affirmed that what was indicated therein were jurisprudential interpretation parameters, and cited the Antezana Cueto case (Exp. 149-2009), in which the intervening higher vocals deviated from said interpretation parameters.

303. In the instant case, the Court determined that the State continues to fail to comply with Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons in relation to the application of Article 320 of the Criminal Code. Likewise, the Court stresses that the inadequate classification of the crime of forced disappearance, as well as the interpretation emanating from the aforementioned Plenary Agreement, may have an effect in the future regarding the investigations of cases of forced disappearance of persons, for which reason it is pertinent as a way of prevention in the future to reiterate to the State the need to adapt the criminal type to international parameters.

304. Therefore, the Court reiterates, as ordered in the cases *gomez palomino*<sup>330</sup>, *Anzualdo Castro*<sup>331</sup> and *Osorio Rivera*<sup>332</sup>, all against Peru, that the State must reform its criminal legislation in order to make it compatible with the criminalization according to international parameters in terms of forced disappearance of persons, with special attention to the provisions of the American Convention and the Inter-American Convention on Forced Disappearance of Persons. Court

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<sup>330</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 149 and operative paragraph 12.

<sup>331</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 191 and operative paragraph 8.

<sup>332</sup> Cf. *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 271 and operative paragraph 12.

emphasizes that said legal reform was ordered for the first time 11 years ago, for which reason the State is urged to comply with it as soon as possible.

#### **4. Other measures requested**

305. The Commission and the representatives requested a series of additional measures of reparation, namely: a) the need to implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces to prevent similar events from occurring in the future; b) to ensure that the manuals used in the instruction of Armed Forces personnel are compatible with international standards referring to the detention of persons and their treatment during the time they are in their custody; c) the recovery of the memory of the disappeared victim, and d) the posting of the name of Rigoberto Tenorio Roca in a street, square or school in the city of Huanta, after consulting his next of kin, or in any case,

306. In relation to the other measures of reparation requested, the Court considers that the issuance of this Judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victims and does not deem it necessary to order said measures.

### ***D. Compensatory compensation for pecuniary and non-pecuniary damage***

#### ***D.1 General arguments of the parties and the Commission***

##### *Arguments of the parties and the Commission*

307. The **State** indicated that both Mrs. Cipriana Huamaní Acampa and her daughter Edith Carolina Tenorio Huamaní received exceptional compensation and a survivor's pension granted by the Transitional Council of Regional Administration of Ayacucho (hereinafter "CTAR Ayacucho"), by virtue of Supreme Decree No. 051-88-PCM published on April 12, 1988, which provided that public officials and servants, mayors and councilors who were victims of acts of terrorism in action or on secondment, they would be entitled to exceptional compensation. This would have constituted an extraordinary measure adopted by the Peruvian State in order to care for the victims of drug-trafficking violence and terrorism, as well as their families.

308. In this sense, the State argued that in the Resolution of the CTAR Ayacucho No. 029-2000-CTAR AYAC/CRC-PE of August 21, 2000, the right to receive an exceptional compensation amounting to the sum of three thousand seven hundred and eighty nuevos soles (S/. 3,780.00), equivalent to the date of its delivery to the sum of one thousand eighty-six and 83, was recognized on a one-time basis. /100 United States dollars (US\$ 1,086.83). The State highlighted that according to the statement made at the public hearing by Mrs. Cipriana Huamaní, the payment of said compensation would have been made in 2002, with 50% being awarded in her favor and the remaining 50% to the minor daughter Edith Carolina Tenorio Huamaní, and the total amount must be paid in the name of the mother, since she is responsible for the exercise of parental authority.

309. The State also indicated that, in addition to this exceptional compensation, in the same resolution cited, the CTAR Ayacucho decided to grant a survivor's pension retroactively to the date of the deceased's death, that is, July 7, 1984, information that was corroborated by Mrs. Huamaní during her statement at the hearing on the case. The State indicated that the pension consisted of the entire gross income that the deceased received at the time of

moment of the event, plus the corresponding posthumous promotion to the immediately higher level or category. Therefore, the State reported that the pension accrued as of January 31, 2001 amounted to fifty-one thousand three hundred and sixty-six and 61/100 nuevos soles (S/. 51,366.61).<sup>333</sup>, which was equivalent to the amount of fourteen thousand six hundred and thirty-four and 36/100 United States dollars (US\$ 14,634.00) on the date on which Directorial Resolution No.00574 of July 10, 2001 was issued, which, collecting what was ordered by CTAR Ayacucho Resolution No. 029-2000-CTAR AYAC/CRC-PE, recognized the pension mentioned. The State indicated that 50% of the survivors' pension was recognized as a widow's pension in favor of the spouse Cipriana Huamaní Anampa, while the remaining 50% was recognized in favor of the youngest daughter, Edith Carolina Tenorio Huamaní.

310. Similarly, the State highlighted that Mrs. Cipriana Huamaní currently receives a monthly pension amounting to eight hundred and sixty-one 47/100 nuevos soles (S/. 861.47), higher than the current minimum living wage (S/. 750.00), that is, the equivalent of US\$ 253.89 United States dollars. The State indicated that the amount of the pension was increased, because previously Mrs. Cipriana Huamaní received the sum of six hundred and seventy-nine and 89/100 nuevos soles (S/. 679.89). As of July 30, 2008, in accordance with Regional Directorial Resolution No. 01896, it was resolved to declare the expiration of the survivor's pension due to orphanage to Edith Carolina Tenorio Huamaní, for having reached the age of majority.

311. Referring to the nature of the compensation and pension granted, the State indicated that Supreme Decree No. 051-88-PCM was not a labor law and that the Peruvian State understood it that way when establishing its policy of reparations for human rights violations. It also alleged that the Supreme Decree did not have the intervention of the Ministry of Labor at the time, which was an indication that the norm responded to compensation logic and not labor law.

312. The State affirmed that since the widow and the minor daughter of Mr. Tenorio Roca had already received financial compensation derived from Supreme Decree No. 051-88-PCM, they could not receive another within the framework of the Comprehensive Reparations Plan (PIR), to the extent that this would mean double financial compensation for the same facts. However, the State indicated that this did not exclude them from access to the other reparation programs that were part of the PIR. On the other hand, the State argued that the other six children of Mr. Tenorio Roca, registered in the RUV, who would not have received any amount of economic reparation, unlike their mother and sister, would be considered in the nineteenth list of beneficiaries of the Economic Reparations Program (PRE), to be approved during the first semester of 2016.

313. For their part, the **representatives** They pointed out that Supreme Decree No. 051-88-PCM of April 11, 1988, established that public sector officials and servants who are victims of accidents, acts of terrorism or drug trafficking that occurred in action or in commission of services, would be entitled to exceptional compensation. In this sense, they affirmed that both the compensation and the pension granted were based primarily on the fact that the victim had worked as a public official or servant, that is, the employment relationship of the victim with the State. The representatives argued that this constituted an exceptional provision in the particular circumstances described above that was provided to the official and/or his family, since

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<sup>333</sup> The calculation of the payment of the accrued pension as of January 31, 2001 was carried out as follows: 1) from August 1984 to December 1990, the sum of the amounts amounted to four thousand three hundred and twenty-five and 9/100 nuevos soles and, 2) from January 1991 to January 2001, the sum of the various amounts of basic remuneration and other items amounted to forty-seven thousand forty-one with 52/100 nuevos soles. Finally, as the total amount to be received, both amounts add up to the amount of fifty-one thousand three hundred and sixty-six with 61/100 nuevos soles, which was equivalent to the amount of fourteen thousand six hundred and thirty-four with 36/100 United States dollars on the date of delivery.

By law, any public official who has died while active or being a severance or disability pensioner had the right for their surviving family members (widow (or) children or parents) to receive a monthly sum of money for services rendered to the State. In this sense, they affirmed that according to the general regulations, Mrs. Cipriana Huamaní and her children were entitled to the widow's and orphan's pension, respectively, that is, fifty percent to the surviving spouse and the other fifty percent to the children.

314. With regard to the retroactivity of the pension, the representatives argued that although the State recognized that it had retroactive effects to the date of the deceased's death, it was granted to Mrs. Cipriana Huamaní Anampa as a widow and to the then minor, Edith Carolina Tenorio Huamaní, without repairing or acknowledging that on the date of the disappearance of the deceased Tenorio Roca, all her children were minors. Therefore, the representatives indicated that if retroactivity had really been applied in full recognition of the rights of the family of Rigoberto Tenorio Roca, both the exceptional compensation and the pension should have been for the widow and her eight children.

315. Likewise, the representatives indicated that the economic reparation measure established through the PIR could not be equated to that derived from an international procedure for serious human rights violations, in which the quantification of the damage was determined according to the particularities of the specific case and not under the generic conditions of a reparation such as that established in the aforementioned law. In the same way, they highlighted that the State itself recognized the obstacles that existed for compliance with the payment of economic reparation in accordance with the national reparations legislation, for which reason the organizations of victims of political violence have considered these reparation measures "inconsistent with the damage they suffered." requesting a review of the reparations for not fully considering the seriousness of the violation, the damage, and the impact on the victims and family members. Finally, the representatives pointed out that the State's position of not making reparation both to the mother of the victim, Mrs. Isidora Roca Gómez, and to her brother Juan Tenorio Roca, for the violation of their human rights is extremely serious, since the State alleges provisions of domestic law to openly fail to comply with the recommendation formulated by the Commission.

316. The **Commission** indicated that, with regard to the State's argument that Cipriana Huamaní Anampa and her daughter Edith Carolina Tenorio Huamaní had already received reparations, if it was verified that the State had made progress with the granting of some reparations, either administratively or judicially, it would be up to the Court to evaluate said reparations in light of the comprehensive reparation standard and order the corresponding complementary measures to achieve said standard. The Commission indicated that the amount of money delivered by the State to the next of kin of Mr. Tenorio Roca would derive from the nature of the victim's public servant and the years of service worked, considering that his death was categorized within the assumptions of the law related to acts of drug trafficking, accidents or acts of terrorism, and it was not the result of reparation for the forced disappearance of the victim at the hands of the State agent. In this sense, the Commission highlighted that in the instant case no reparation measure related to the forced disappearance had been ordered and it was up to the Court to establish the corresponding reparations, in light of its consistent jurisprudence.

#### ***D.2 Specific allegations regarding pecuniary and non-pecuniary damage***

317. The **Commission** requested the Court to order full reparation for the declared human rights violations, both material and moral, including fair compensation.

318. The **representatives** They indicated that Rigoberto Tenorio Roca was a former member of the Republican Guard and a retired Army sub-officer at the time of his arrest.

He worked as a pre-military instructor at the "González Vigil" College, located in the province of Huanta. They also indicated that since the State cut short the life of Rigoberto Tenorio Roca early, the calculation had to be made based on the minimum wage in Peru from 1984 to the present, updating the amounts to the current value, even though Rigoberto Tenorio Roca received an amount greater than the legal minimum each month. They requested the amount of US\$ 34,894.47 as unpaid wages from 1984 to 2014.

319. The representatives stated that, from the initial moment of the forced disappearance of Rigoberto Tenorio Roca, and over the years, the victim's next of kin have taken a series of steps to find his whereabouts, establish the truth of what happened, and seek justice in the case. They also indicated that since these expenses have originated over a period of almost 30 years, the family of Rigoberto Tenorio Roca does not keep receipts for them, for which reason they asked the Court to establish in equity the amount that the Peruvian State must pay to reimburse the expenses incurred.

320. The representatives requested that the Court establish that the State must pay Rigoberto Tenorio Roca for non-pecuniary damage the amount of US\$100,000.00, an amount that must be distributed among his heirs. They also requested that the Court establish that the State is obliged to pay US\$50,000.00 in favor of the wife and children of Rigoberto Tenorio Roca and US\$30,000.00 in favor of Cipriana Huamaní Anampa, who has been the main promoter of the permanent search for justice for the disappearance of her husband.

321. The **State** indicated that there is no violation of the rights recognized in the American Convention on Human Rights. Likewise, he expressed his disagreement with the high amount requested, arguing that the purpose of the inter-American system is to protect human rights and not profit from it. In addition to this, he pointed out that, for the pecuniary damage to be attributed to the State, a causal link between it and the alleged violations denounced must be proven.

### ***D.3 Considerations of the Court on payments made domestically for exceptional compensation and survivor's pension***

322. The Court has developed the concept of pecuniary damage<sup>334</sup> and immaterial<sup>335</sup> and the cases in which it corresponds to indemnify them. For this reason, the Court will determine the appropriateness of granting pecuniary reparations and the respective amounts owed in this case, for which it takes into account that the State presented arguments indicating that both the wife and one of the daughters of Mr. Tenorio Roca received exceptional compensation and a survivor's pension granted by the CTAR Ayacucho Regional Qualification Council, which should be taken into account by this Court when evaluating the reparations requested. At the same time, the State indicated that there is no violation of the rights recognized in the American Convention and expressed "its profound disagreement with the high amounts requested by the representatives."

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<sup>334</sup> This Court has established that pecuniary damage supposes "the loss or detriment of the income of the victims, the expenses incurred as a result of the facts and the pecuniary consequences that have a causal link with the facts of the case." *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 142.

<sup>335</sup> This Court has established that non-pecuniary damage "can include both the suffering and afflictions caused to the direct victim and his relatives, the impairment of very significant values for people, as well as the alterations, of a non-pecuniary nature, in the living conditions of the victim or his family." *Case of the Street Children (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 148.

323. The Court has reiterated, in previous cases, that:

[...] if there are national mechanisms to determine forms of reparation, those procedures and results can be assessed. If these mechanisms do not meet the criteria of objectivity, reasonableness, and effectiveness to adequately repair the violations of rights recognized in the Convention declared by this Court, it corresponds to it, in exercise of its subsidiary and complementary jurisdiction, to order the pertinent reparations.<sup>336</sup>

324. In the present case, the Court has verified that, by Order of August 21, 2000 and in response to the request of Mr. Rigoberto Tenorio Roca's wife, compensation was granted for a single time in favor of Mrs. Cipriana Huamaní and Edith Carolina Tenorio Huamaní, which amounted to the total amount of three thousand seven hundred and eighty nuevos soles (S/. 3,780.00), which at the rate exchange rates in force at the time of issuing the resolution were equivalent to approximately one thousand eighty-six dollars of the United States of America (US\$ 1,086.00).

<sup>337</sup> The basis for said exceptional compensation was Supreme Decree No. 051-88-PCM of April 12, 1988, which establishes that "[t]he appointed and contracted officials and servants of the Public Sector, Mayors and Councilors, who are victims of accidents, acts of terrorism or drug trafficking that occurred in action or on commission of services, shall be entitled to exceptional compensation. In the event of death, the beneficiaries of the exceptional compensation are the relatives.<sup>338</sup> The State did not grant compensation to the other children of Mr. Tenorio Roca and Mrs. Cipriana Huamaní Anampa for being of legal age and, furthermore, for not having proven their status as students.

325. The Court has verified that, in addition to the exceptional compensation granted to Mrs. Cipriana Huamaní and Edith Tenorio Huamaní, by means of the same Presidential Resolution No. 029-2000-CTAR AYAC/CRC-PE of August 21, 2000, they were also granted a survivor's pension that was in effect retroactively to July 7, 1984, equivalent to the full amount of the gross income they received. the cause at the time of the event as a pre-military instruction teacher at the "González Vigil" College, plus the amount corresponding to the posthumous promotion to the immediately higher level or category, of which 50% was recognized as a widow's pension in favor of the spouse Cipriana Huamaní Anampa, and the other 50% as an orphan's pension in favor of the youngest daughter Edith Carolina Tenorio Huamaní<sup>339</sup>.

326. In the instant case, the reparatory nature of the compensation granted is in dispute. On the one hand, the representatives argued that both the compensation and the pension are based primarily on the fact that the victim has worked as a public official or servant, that is, being part of an employment relationship with the State, and whose purpose is to repair the frustrated life project of the official or public servant victim in an action or commission of services of an accident, act of terrorism or drug trafficking. On the other hand, the State alleged that Supreme Decree No. 051-88-PCM was prepared without the intervention of the labor sector, which is an indication that the norm did not respond to a logic of labor law but to a measure of a general nature with an expressly compensatory component and another,

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<sup>336</sup> *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 246.

<sup>337</sup> *cf.* Resolution issued by the CTAR Ayacucho Regional Qualification Council on August 21, 2000 (evidence file, volume VIII, annex 51 to the State's response, folios 4145 to 4148).

<sup>338</sup> Supreme Decree No. 051-88-PCM of April 11, 1988 (evidence file, volume VIII, annex 52 to the State's response, folios 4149 to 4155).

<sup>339</sup> *cf.* Resolution issued by the CTAR Ayacucho Regional Qualification Council on August 21, 2000 (evidence file, volume VIII, annex 51 to the State's response, folios 4145 to 4148).

327. The Court understands that the legal basis on which the exceptional compensation and pension was granted to Mrs. Cipriana Huamaní Anampa and her daughter not only took into account the employment relationship of her husband, but also certain specific circumstances contemplated in the law, namely: being the victim of an accident, acts of terrorism or drug trafficking. In this sense, the Court understands that the source of the compensation is not strictly of a labor nature.

328. However, although these reparations could be taken into account when estimating the amounts corresponding to the compensation in this case, it must be noted that they do not correspond to the violations declared in this judgment, to the extent that it is not recognized that the disappearance of Mr. Tenorio Roca was perpetrated by state agents. In effect, said point was reaffirmed by the State when maintaining that said reparations in no way imply an acknowledgment of international responsibility for the facts of the present case, while the Resolution by which the aforementioned reparations were granted "understood that the injurious act to the detriment of Mr. Rigoberto Tenorio Roca would not have been an act of the State but of terrorism."

329. Consequently, with respect to the amount granted as exceptional compensation, the Court positively values the actions of the domestic bodies in this case but will not take it into account when estimating the amounts corresponding to the compensation in this case. Therefore, the Court considers that in the present case it is appropriate to order compensatory damages according to the criteria developed by this Inter-American jurisdiction.

330. Now, with regard to the pension, the Court notes that in order to grant it, the Regional Qualification Council -CTAR Ayacucho- took into account the amount of money that those people who were economically dependent on her, as surviving spouse and minor daughter, stopped receiving from the victim. The following was taken into consideration: 1) that Mr. Tenorio Roca worked in the education sector for 16 years with 3 months of effective service, as a Pre-Military Instruction Teacher at the "González Vigil" State College of the Huanta Province of the Department of Ayacucho; 2) that on July 7, 1984, when he was traveling from Huanta to the city of Huamanga-Ayacucho, on official duty, he was disappeared, "presumably by subversive elements"; 3) that Mr. Tenorio Roca left his wife and children as orphans, thus being beneficiaries of the exceptional compensation and pension for survivors of widowhood and orphanhood who are underage and of legal age as students<sup>340</sup>. The latter was accredited only with respect to Edith Carolina Tenorio Huamaní.

331. As of 2008, it was resolved that said survivor pension would continue to be received in its entirety by Mrs. Huamaní Anampa, given that her daughter Edith Carolina Tenorio Huamaní had reached the age of majority and, therefore, her right to receive the orphan's pension had expired.<sup>341</sup> Currently, Mrs. Cipriana is receiving the amount of eight hundred and sixty-one and 47/100 nuevos soles (S/. 861.47), which according to the current exchange rate is approximately 253.89 United States dollars. According to the applicable regulations, the pension right will expire with the marriage or death of the beneficiary.<sup>342</sup>

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<sup>340</sup> *cf.* Resolution issued by the CTAR Ayacucho Regional Qualification Council on August 21, 2000 (evidence file, volume VIII, annex 51 to the State's response, folios 4145 to 4148).

<sup>341</sup> *cf.* Regional Director's Resolution issued by the Ayacucho Regional Directorate of Education on July 30, 2008 (evidence file, volume XI, annex 17 to the final arguments of the State, folios 5215 to 5216).

<sup>342</sup> *cf.* Supreme Decree No. 051-88-PCM of April 11, 1988 (evidence file, volume VIII, annex 52 to the State's response, folios 4149 to 4155).



332. The Court notes that, to calculate the amount of the pension, the State took into account the income that the persons who were financially dependent on the person whose whereabouts are unknown would have stopped receiving. Even though this pension was only granted to the dependent relatives of the disappeared victim, it was established with objective and reasonable criteria.<sup>343</sup> In this sense, the Court considers that the next of kin of Mr. Tenorio Roca had access to compensation, which is comparable in concept to that ordered by the Inter-American Court for loss of income. Consequently, the Court positively assesses what was done internally by the Regional Qualification Council -CTAR Ayacucho- in this case and considers that what is established in that administrative instance is reasonable in the terms of its jurisprudence, in such a way that it will not grant an additional amount for this concept in accordance with the principle of complementarity to which the inter-American jurisdiction obeys.<sup>344</sup>

#### ***D.4 Considerations of the Court on consequential damage***

333. The Court notes that, despite the fact that no proof of expenses was provided, it is presumable that the next of kin of Mr. Tenorio Roca incurred various expenses due to his detention and subsequent disappearance. In this regard, the Court recalls that Mrs. Huamaní indicated that five months after the events, she had to move with all of his children to Lima.<sup>3.4.5</sup> With said displacement, Mrs. Cipriana had to leave her house, as well as her store, and she lost all her belongings.<sup>346</sup> In addition to this, in order to find out the fate and whereabouts of Mr. Tenorio Roca, his relatives carried out procedures before state authorities, among which are testimonial statements, both before the CVR and before the various investigative and judicial authorities. The Court deems that the State must grant compensation for said expenses, since they have a direct causal link with the violations of this case.<sup>347</sup> As stated, the file does not contain suitable receipts to accurately determine the amount of the expenses that these procedures must have caused to the members of the family of Mr. Rigoberto Tenorio Roca. Considering the particular circumstances of the case, the Court, however, deems it pertinent to establish in equity the amount of US\$15,000.00 (fifteen thousand United States dollars), as compensation for these concepts. Of said amount, the amount of US\$ 12,000.00 (twelve thousand United States dollars) must be delivered to Mrs. Cipriana Huamaní Anampa and the amount of US\$ 3,000.00 (three thousand United States dollars) must be delivered to Mr. Juan Tenorio Roca.

#### ***D.5 Considerations of the Court on non-pecuniary damage***

334. International jurisprudence has repeatedly established that the judgment may constitute *per se* form of repair<sup>348</sup>. However, the Court has developed in its

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<sup>343</sup> Cf. *Case of Cepeda Vargas v. Colombia*, *supra*, paras. 139 and 140, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary Exceptions, Merits and Reparations*, Judgment of November 30, 2012. Series C No. 259, para. 37.

<sup>344</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia*, *supra*, para. 246, and *Case of Tarazona Arrieta et al. v. Peru*, *supra*, para. 137.

<sup>3.4.5</sup> cf. Testimonial statement No. 200577 rendered before the Truth and Reconciliation Commission by Cipriana Huamaní Anampa on March 6, 2002 (evidence file, tome I, annex 22 to the merits report, folio 528).

<sup>346</sup> cf. Statement made by Cipriana Huamaní Anampa before the Inter-American Court at the public hearing held on February 22, 2016.

<sup>347</sup> Cf. *Case of Castillo Páez v. Peru. Reparations and Costs*, Judgment of November 27, 1998. Series C No. 43, para. 76, and *Duque v. Colombia Case*, *supra*, para. 194.

<sup>348</sup> Cf. *Case of Suárez Rosero v. Ecuador. Reparations and Costs*, Judgment of January 20, 1999. Series C No. 44, para. 72, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 148.

jurisprudence the concept of non-pecuniary damage and has established that this "can include both the suffering and afflictions caused to the direct victim and his relatives, the impairment of very significant values for people, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his family"<sup>349</sup>.

335. In consideration of the circumstances of this case, the violations committed, the suffering caused and experienced to different degrees, the time elapsed, the denial of justice, as well as the change in the living conditions of some next of kin, the proven effects on the personal integrity of the next of kin of the victims, and the other consequences of a non-pecuniary nature that they suffered, the Court goes on to establish in equity the compensation for non-pecuniary damage in favor of the victims.

336. First of all, the Court considers that the circumstances surrounding the arrest and subsequent disappearance of Mr. Rigoberto Tenorio Roca were of such a nature that they caused him deep fear and suffering. In previous cases<sup>350</sup>, the Inter-American Court considered that similar circumstances had caused the victim serious non-pecuniary damage that should be assessed in its entirety when establishing compensation for this concept. In light of this criterion, the Court considers that Mr. Rigoberto Tenorio Roca must be compensated for non-pecuniary damage and orders, in equity, the payment of US\$80,000.00 (eighty thousand United States dollars). Half of this amount must be delivered to Mrs. Cipriana Huamaní Anampa, and the other half must be distributed equally, between the daughters and sons of Mr. Rigoberto Tenorio Roca: Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huaman. amaní,

337. Secondly, the Court finds that Cipriana Huamaní Anampa, Isidora Roca Gómez, Juan Tenorio Roca, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní were affected as a result of the forced disappearance of Mr. Rigoberto Tenorio Roca and have experienced great suffering that has had an impact on their life projects.

338. Based on the foregoing, the Court establishes in equity the amount of US\$45,000.00 (forty-five thousand United States dollars), for non-pecuniary damage, in favor of Cipriana Huamaní Anampa, as well as each of the children of Rigoberto Tenorio Roca, namely, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní.

339. Finally, in view of the effects on personal integrity suffered to different degrees as a result of the facts of this case, the Court establishes, in equity, the amount of US\$20,000.00 (twenty thousand United States dollars) in favor of Mrs. Isidora Roca Gómez, an amount that must be distributed among her successors (*infrapara*. 351). In addition, the Court establishes in equity the amount of US\$10,000.00 (ten thousand United States dollars) in favor of Mr. Juan Tenorio Roca, who has promoted the search for justice for the disappearance of his brother, Rigoberto Tenorio Roca, along with his wife.

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<sup>349</sup> *Case of the Street Children (Villagrán Morales et al.) v. Guatemala. Reparations and Costs, supra*, para. 84, and *Case of Maldonado Ordoñez v. Guatemala, supra*, para. 148.

<sup>350</sup> *Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs. Judgment of May 26, 2001. Series C No. 15, para. 51, and Case of Osorio Rivera and family v. Peru, supra*, para. 288.

### ***E. Costs and Expenses***

340. The **representatives** indicated in the initial phase of the investigations, the family contracted the services of lawyers from whom they have not kept the receipts for the expenses incurred, for which they requested the Court to set this amount in equity, taking into account that the internal process began in August 1984, while the international one began in November 1998, more than 16 years ago. In addition to this, the representatives stated that in the internal and international processes, the family of Rigoberto Tenorio Roca has had the support of the Association for Human Rights (APRODEH), which, being a non-profit organization, has not charged any type of fee. Based on this, they requested the Court to establish in equity an amount of US\$ 20,000.00, for the expenses incurred by APRODEH,

341. The **State** considered unacceptable that said claim is alleged without complying with presenting the receipts and other documents that justify the origin of the repair. The State indicated that the payment of costs and expenses is only appropriate if there are receipts, tickets or other documents that prove that the disbursement was made during the present proceeding. The State argued that in this case, the claims requested must be related to expenses that allowed the alleged victims or their representatives to resort to the inter-American system, stressing that only necessary and reasonable expenses, duly supported by documentation, are considered as such. Finally,

#### *Considerations of the Court*

342. The Court reiterates that, according to its jurisprudence<sup>351</sup>, the costs and expenses are part of the concept of reparation, since the activity carried out by the victims in order to obtain justice, both nationally and internationally, implies expenses that must be compensated when the international responsibility of the State is declared through a conviction. Regarding the reimbursement of costs and expenses, it is up to the Court to prudently assess its scope, which includes the expenses generated before the authorities of the domestic jurisdiction, as well as those generated in the course of the proceeding before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. *quantum* be reasonable<sup>352</sup>.

343. The Court has indicated that "the claims of the victims or their representatives in terms of costs and expenses, and the evidence that supports them, must be presented to the Court at the first procedural moment granted to them, that is, in the pleadings and motions brief, without prejudice to the fact that such claims are updated at a later time, in accordance with the new costs and expenses incurred during the proceedings before this Court."<sup>353</sup>.

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<sup>351</sup> Cf. *Case of Velázquez v. Honduras. Reparations and Costs*, *supra*, para. 42, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 155.

<sup>352</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 155.

<sup>353</sup> *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, *supra*, para. 79, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 156.

Likewise, the Court reiterates that the remittance of probative documents is not enough, but that the parties are required to make an argument that relates the evidence to the fact that is considered to be represented, and that, as these are alleged financial disbursements, the items and justification for them should be clearly established.<sup>354</sup>

344. Regarding the expenses incurred by the next of kin in the initial stages, the Court has already valued them under the concept of consequential damages. With regard to the work of APRODEH, which has accompanied the next of kin of Rigoberto Tenorio Roca in the investigation and processing of the litigation at the national and international level in this case from 1998 to the present, the only receipts sent at the due procedural opportunity correspond to transportation, lodging, food and per diem expenses to attend the hearing held before the Court in this case in San José, Costa Rica, amounting to a proven amount of US\$ 2,276.93.

345. Consequently, the Court decides to establish, in equity, the amount of US\$ 10,000.00 (ten thousand United States dollars) for reimbursement of costs and expenses for the work carried out in the litigation of the case at the domestic and international level. The fixed amount must be delivered directly to the representative organization, the Association for Human Rights (APRODEH). The Court considers that, in the procedure for monitoring compliance with this Judgment, it may order the State to reimburse the victims or their representatives for the reasonable expenses incurred in said procedural stage.

#### ***F. Reimbursement of expenses to the Victims Legal Assistance Fund***

346. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American Human Rights System, which was created with the "object [of] facilitating access to the inter-American human rights system for those people who currently do not have the necessary resources to bring their case to the system."<sup>355</sup> In the present case, the financial assistance necessary to cover the necessary travel and lodging expenses for Mrs. Cipriana Huamaní Anampa to participate in the public hearing, as well as the reasonable expenses of formalizing and sending the affidavit of two expert opinions and a testimony proposed by the representatives, as determined by them, were granted from said Fund.

347. The State had the opportunity to present its observations on the disbursements made in the instant case, which amounted to US\$2,133.69 (two thousand one hundred thirty-three and 69/100 United States dollars). The State indicated that the per diem table was not included as supporting documentation for the report, so it was subsequently forwarded for consideration.

348. Next, it corresponds to the Court, in application of Article 5 of the Regulations of the Fund, to evaluate the admissibility of ordering the defendant State to reimburse the Legal Assistance Fund corresponding to the Inter-American Court of the expenditures incurred.

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<sup>354</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Maldonado Ordoñez v. Guatemala*, *supra*, para. 156.

<sup>355</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during the celebration of the XXXVIII Regular Period of Sessions of the OAS, in the fourth plenary session, held on June 3, 2008, "Creation of the Legal Assistance Fund of the Inter-American Human Rights System", Operative Point 2.a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the OAS Permanent Council, "Regulations for the Operation of the Assistance Fund of the Inter-American Human Rights System", article 1.1.

349. Due to the violations declared in this Judgment and the fact that the requirements to benefit from the Fund were met, the Court orders the State to repay said Fund the amount of US\$ 2,133.69 (two thousand one hundred thirty-three with 69/100) for the necessary expenses incurred for the appearance of a declarant at the public hearing in this case, as well as for the formalization and delivery of the *affidavits*. Said amount must be reimbursed within a period of ninety days, counted from the notification of this Judgment.

### ***G. Modality of fulfillment of the ordered payments***

350. The State must make the payment of the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this Judgment directly to the persons and organizations indicated therein, within a period of one year, counted from the notification of this Judgment, in the terms of the following paragraphs.

351. In the event that the beneficiaries have died or die before the respective compensation is delivered, it will be made directly to their heirs, in accordance with applicable domestic law. In this regard, the Court has taken note that Isidora Roca Gómez died before the issuance of this judgment.

352. The State must comply with its monetary obligations by paying in United States dollars or its equivalent in Peruvian currency, using for the respective calculation the exchange rate in force at the Central Bank of the Republic of Peru, the day prior to payment.

353. If for reasons attributable to the beneficiaries of the compensation or their successors it is not possible to pay the determined amounts within the indicated period, the State will deposit said amounts in their favor in an account or certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and under the most favorable financial conditions allowed by law and banking practice. If the corresponding compensation is not claimed after ten years, the amounts will be returned to the State with the accrued interest.

354. The amounts assigned in this Judgment as compensation and as reimbursement of costs and expenses must be fully delivered to the persons and organizations indicated, in accordance with the provisions of this Judgment, without reductions derived from eventual tax charges.

355. In the event that the State incurs in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it must pay interest on the amount owed, corresponding to the default bank interest in the Republic of Peru.

## **IX RESOLUTIVE POINTS**

356. Therefore,

**COURT**

**DECIDE,**

Unanimously,

1. To dismiss the preliminary objection filed by the State regarding the alleged lack of exhaustion of domestic remedies, in the terms of paragraphs 20 to 25 of this Judgment.
2. To dismiss the preliminary objection filed by the State regarding the alleged lack of competence *ratione temporis* of the Inter-American Court regarding the Inter-American Convention on Forced Disappearance of Persons, in the terms of paragraphs 29 to 33 of this Judgment.

**DECLARES:**

Unanimously, that:

3. The State is responsible for the forced disappearance of Mr. Rigoberto Tenorio Roca and, in consequence, for the violation of the rights to personal liberty, personal integrity, life and recognition of legal personality, recognized in Articles 7, 5.1, 5.2, 4.1 and 3 of the American Convention on Human Rights, in relation to the obligations to respect and guarantee those rights, contained in Article 1.1 thereof, as well as in relation to Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rigoberto Tenorio Roca, in the terms of paragraphs 140 to 164 of this Judgment.
4. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in articles 8.1 and 25.1 of the American Convention on Human Rights, in relation to the obligations to respect and guarantee those rights and to adopt provisions of domestic law, contained in articles 1.1 and 2 thereof, as well as in relation to articles Ib) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rigoberto Tenorio Roca, Cipriana Huamaní Anampa, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní, Edith Carolina Tenorio Huamaní, Isidora Roca Gómez and Juan Tenorio Roca. Besides, Peru is responsible for the violation of the right to know the truth of the next of kin of the disappeared victim. All this, in the terms of paragraphs 165 to 249 of this Judgment.
5. The State is responsible for the violation of the right to personal integrity recognized in Article 5.1 and 5.2 of the American Convention on Human Rights, in relation to the obligation to respect, contained in Article 1.1 thereof, to the detriment of Cipriana Huamaní Anampa, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní, Edith Carolina Tenorio Huamaní, Isidora Roca Gómez and Juan Tenorio Roca, in the terms of paragraphs 254 to 258 of this Judgment.
6. The State is not responsible for the violation of the duty to adopt provisions of law domestic law, established in Article 2 of the American Convention on Human Rights, in relation to Articles 8 and 25 thereof, with respect to Article 10 of Law No. 24150, in the terms of paragraphs 203 to 204 of this Judgment.

**AND PROVIDES:**

Unanimously, that:

7. This Judgment constitutes, *per se*, a form of repair.

8. The State must continue effectively and with the greatest diligence the investigations and ongoing criminal proceedings, as well as open those necessary in order to identify, prosecute and, where appropriate, punish all those responsible for the forced disappearance of Rigoberto Tenorio Roca within a reasonable time, in accordance with the provisions of paragraphs 267 to 269 of this Judgment.
9. The State must maximize exhaustive search efforts through the courts and/or appropriate administrative procedure, to determine the whereabouts of Mr. Rigoberto Tenorio Roca as soon as possible, in accordance with the provisions of paragraphs 273 to 276 of this Judgment.
10. The State must provide free, immediate, adequate, and effective medical and psychological or psychiatric treatment through its specialized health institutions to the victims who request it, in accordance with the provisions of paragraph 284 of this Judgment.
11. The State must make the publications indicated in paragraph 288 of this Judgment.
12. The State must carry out a public act of acknowledgment of international responsibility for the facts of this case, in accordance with the provisions of paragraph 293 of this Judgment.
13. The State must grant Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní a scholarship in a Peruvian public institution arranged between each child of Rigoberto Tenorio Roca and the State of Peru to study or train in a trade, in accordance with the provisions of paragraphs 296 to 298 of this Judgment.
14. The State must amend, as soon as possible, its criminal legislation in order to make it compatible with the criminalization according to international parameters in matters of forced disappearance of persons, in accordance with the provisions of paragraphs 303 to 304 of this Judgment.
15. The State must pay the amounts established in paragraphs 333, 336, 338, 339 and 345 of this Judgment, as compensation for consequential damages and non-pecuniary damage, and for the reimbursement of costs and expenses, in the terms of the aforementioned paragraphs and paragraphs 350 to 355.
16. The State must reimburse the Fund for Legal Assistance for Victims of the Inter-American Court of Human Rights the amount disbursed during the processing of this case, in the terms of paragraphs 346 to 349 and 355 of this Judgment.
17. The State must, within a period of one year from the notification of this Judgment, provide the Court with a report on the measures adopted to comply with it, without prejudice to what is established in paragraph 289 of this Judgment.
18. The Court will monitor full compliance with this Judgment, in the exercise of its powers and in compliance with its duties under the American Convention on Human Rights, and will conclude this case once the State has fully complied with its provisions.

Written in Spanish in San José, Costa Rica, on June 22, 2016.

Judgment of the Inter-American Court of Human Rights. Case of Tenorio Roca et al. vs.. Peru.  
Preliminary Exceptions, Merits, Reparations and Costs.

Roberto F. Caldas  
President

Eduardo Ferrer Mac-Gregor Poisot

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Hate Benedict

Eugenio Raul Zaffaroni

L. Patricio Pazmino Freire

Pablo Saavedra Alessandri  
Secretary

Communicate and execute,

Roberto F. Caldas  
President

Pablo Saavedra Alessandri  
Secretary