

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF TERRONES SILVA ET AL. V. PERU**

**JUDGMENT OF SEPTEMBER 26, 2018**

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

*If Terrones Silva et al. v. Peru,*

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

Eduardo Ferrer Mac-Gregor Poisot, President;  
Eduardo Vio Grossi, Judge, Vice President;  
Humberto Antonio Sierra Porto, Judge; Eugenio  
Raúl Zaffaroni, Judge, and  
Patricio Pazmino Freire, Judge.

Also present,

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

In accordance with 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 Procedure of the Inter-American Court (hereinafter “Rules of the Court” or “the Rules”), it issues this Judgment, which is structured in the following order:

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\* Judge Elizabeth Odio Benito, for reasons of force majeure accepted by the Plenary Court, did not participate in the deliberation and signing of this Judgment.

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## Yo INTRODUCTION TO THE CAUSE AND OBJECT OF THE DISPUTE

1. *The case submitted to the Court.*—On November 9, 2016, in accordance with the provided in Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Inter-American Court the case that it called *Terrones Silva et al. v. Peru* (hereinafter “the State” or “Peru”). The Commission stated that the case is related to the forced disappearances of Santiago Antezana Cueto (since May 7, 1984), Néstor Rojas Medina (since January 26, 1991), Teresa Díaz Aparicio (since August 19, 1992), Wilfredo Terrones Silva (since August 26, 1992), and Cory Clodolia Tenicela Tello (since August 2, 1992), October 1992). The foregoing took place in the context of the systematic and widespread practice of forced disappearance in the framework of the fight against terrorism by the State, with special incidence in those years. According to the Commission, the State would also be responsible for the torture suffered by Santiago Antezana Cueto at the Acobamba Military Base. The Commission also argued that since the disappearances between 1984 and 1992, long years have elapsed in all cases, without the State having completed the investigations to establish the whereabouts of the alleged victims and to identify, prosecute, and, where appropriate, punish those responsible. Regarding the relatives<sup>1</sup>, the Commission requested that the Court declare the responsibility of the State for the violation of the rights to personal integrity, to judicial guarantees and to an effective judicial remedy. Likewise, it requested that the Court declare the violation of Articles I and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter also “Inter-American Convention on Forced Disappearance” or “CIDFP”), to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Nestor Rojas Medina, Santiago Antezana Cueto and Cory Clodolia Tenicela Tello, and the violation of articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter also the “Inter-American Convention on Torture” or “CIPST”), to the detriment of Santiago Antezana Cueto.

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

to) *Petition.*—Between August 1992 and June 2003, the Commission received five petitions, in which the international responsibility of the State was alleged for the alleged forced disappearances of Wilfredo Terrones Silva (hereinafter also “Mr. Terrones Silva”), Teresa Díaz Aparicio (hereinafter also “Mrs. Díaz Aparicio”), Santiago Antezana Cueto (hereinafter also “Mr. Antezana Cueto”), Néstor Rojas Medina (hereinafter also “Mr. Tello (hereinafter also “Mrs. Tenicela Tello”).

b) *Admissibility Report.*—On July 22, 2011, the Commission adopted the Report No. 108/11 for the case of Cory Clodolia Tenicela Tello; on November 2, 2011 the

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<sup>1</sup> The next of kin named by the Commission are the following: of Wilfredo Terrones Silva: Guillermina Frida Landázuri Gómez (wife); of Teresa Díaz Aparicio: Alberto Díaz Uriarte (father); Graciela Aparicio Pastor (mother); Federico Díaz Aparicio (brother), and Roberto Levi Aparicio (brother), all deceased; of Santiago Antezana Cueto: Rosa Carcausto Paco (cohabitant); Ermilio Antezana Cueto (brother); Máximo Antezana Espeza (uncle, deceased), and Ofelia Antezana Torre (cousin); of Néstor Rojas Medina: Marcelina Medina Negrón (mother); Leopoldo Rojas Manuyama (father); Abelardo Collantes Quiroz (mother’s partner); Tania Collantes Medina (sister); Faustina Collantes Quiroz (aunt), and Luzmilla Collantes Quiroz (aunt), and Cory Clodolia Tenicela Tello: Amadea Tello Barrera (mother); Norma Juana Tenicela Tello (sister), Washington Tenicela Tello (brother), and Yorka Jara Tenicela (niece). Currently, Mrs. Amadea Tello Barrera identifies herself as “Amadea Felipa Tello de Tenicela”, for the purposes of this Judgment her name will be used indistinctly.

Report No. 163/11 for the case of Teresa Díaz Aparicio, and on January 27, 2012 Report No. 3/12 for the case of Santiago Antezana Cueto.<sup>2</sup> c)

*Admissibility and Merits Report.*—On April 13, 2016, the Commission issued Report on Admissibility and Merits No. 5/16 (hereinafter also “Merits and Admissibility Report” or “Merits Report” or “Report”), in which the Commission ordered the consolidation of the cases. Said Report on Admissibility and Merits is for the cases of Wilfredo Terrones Silva and Néstor Rojas Medina, and is on the Merits for the cases of Cory Clodolia Tenicela Tello, Teresa Díaz Aparicio and Santiago Antezana Cueto, under the terms of Article 50 of the Convention, since the Admissibility Report had already been issued for these cases (*suprapara*. 2.b), in which he reached a series of conclusions in which he established that the State was responsible for various violations of human rights enshrined in the American Convention.<sup>3</sup>and made several recommendations to the State.<sup>4</sup>

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<sup>2</sup> IACHR. Report No. 108/11, Case 12.823, Admissibility, Cory Clodolia Tenicela Tello et al., July 22, 2011, available at:<https://www.oas.org/es/cidh/decisiones/2011/PEAD422-03ES.doc> ; IACHR. Report No. 163/11, Case 11,054, Admissibility, Teresa Díaz Aparicio et al., November 2, 2011, available at: <https://www.oas.org/es/cidh/decisiones/2011/PEAD11054ES.doc> ; IACHR. Report No. 3/12, Case 12.224, Admissibility, Santiago Antezana Cueto et al.,

27 January 2012, available at:

<http://www.oas.org/es/cidh/decisiones/2012/PEAD12224ES.doc>, respectively. In these reports, the Commission declared the petitions admissible for the alleged violation of the rights established in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, in accordance with Articles 1.1 and 2 of the Convention.

<sup>3</sup> Namely:

[a)] [...] [T]he rights [to recognition of] legal personality, to life, to personal integrity, to personal liberty, judicial guarantees and judicial protection [established] in articles 3, 4.1, 5.1, 5.2, 7.1, 8.1 and 25.1 of the American Convention [on Human Rights][,] in relation to articles 1.1 and 2 of the same instrument[,], to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cor and Clodolia Tenicela Tello.

[b)] [...] [Articles I and III of the Inter-American Convention on Forced Disappearance of Persons[,], to the detriment of the same [victims].

[c)] [...] [Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture [,], to the detriment of Santiago Antezana Cueto.

[d)] [...] [The rights to personal integrity, judicial guarantees and judicial protection established in] Articles 5.1, 8.1 and 25.1 of the Convention [...] [,] in relation to [Articles] 1.1 and 2 of the same instrument [...] [,] to the detriment of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela Tello].

<sup>4</sup> Namely:

1. Investigate fully, impartially and effectively the whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela Tello and, if applicable, adopt the necessary measures to identify and deliver the mortal remains to their next of kin, according to their wishes.

2. Carry out internal procedures related to human rights violations declared in the [...] report and lead the corresponding proceedings for the crime of forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello; and for the crimes of torture and forced disappearance of Santiago Antezana Cueto; impartially, effectively and within a reasonable time, in order to fully clarify the facts, identify all those responsible and impose the corresponding sanctions.

3. Make adequate reparation for the human rights violations declared in the [...] report, both material and moral, including fair compensation, the establishment and dissemination of the historical truth of the facts, and the implementation of an adequate care program for the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello, in consultation with them and in accordance with their specific needs.

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

5. Publicly acknowledge, guaranteeing adequate dissemination mechanisms, violations declared in the present case.

6. Reform criminal legislation so that the definition of the crime of forced disappearance of people conform to inter-American standards.

d) *Notification to the State.*-The Commission notified the Merits Report to the State on 9 June 2016, granting it a period of two months to report on compliance with the recommendations. After granting an extension, the Commission observes that the State has not complied with the recommendations.

3. *Submission to the Court.*-On November 9, 2016, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and alleged violations of human rights described in the Merits Report "given the need to obtain justice for the victims."

4. *Request of the Inter-American Commission.*-Based on the foregoing, the Commission requested the Court to conclude and declare the international responsibility of Peru for the alleged violation of the rights previously indicated in the conclusions of the Merits and Admissibility Report. Additionally, the Commission asked the Court to order the State certain reparation measures, which will be detailed and analyzed in the corresponding chapter.

## II

### PROCEEDINGS BEFORE THE COURT

5. The submission of the case was notified to the representatives of the alleged victims (in hereafter also "the representatives") and to the State on February 13, 2017, respectively.

6. *Brief of requests, arguments and evidence.* -On April 11, 2017, the Association for Human Rights (hereinafter also "APRODEH"), the Human Rights Commission (hereinafter also "COMISEDH"), and the Institute for Legal Defense (hereinafter also "IDL") submitted their pleadings, motions, and evidence brief (hereinafter "pleadings and motions brief" or "ESAP"), pursuant to Articles 25 and 40 of the Rules of Court. The representatives substantially agreed with the Commission's arguments and asked the Court to declare the international responsibility of the State for the violation of the same articles alleged by the Commission. Finally, the representatives requested various reparation measures and the reimbursement of costs and expenses.

7. *Response letter.* -On July 5, 2017, the State submitted to the Court its brief filing preliminary objections and answering the submission of the case to the Commission and observations on the pleadings and motions brief (hereinafter "answering brief").

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8. *Resolution of Victims Legal Assistance Fund.*-On July 24, 2017 the President issued an Order, through which he declared the request filed by the alleged victims, through their representatives, to avail themselves of the Assistance Fund of the Court.

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<sup>5</sup> By communication dated January 27, 2017, APRODEH, COMISEDH and IDL informed this Court that "they jointly assumed[ed] the representation of the five [alleged] victims and their next of kin, who comprise the [...] joint case as common interveners, pursuant to the provisions of art. [25.2] of the Regulations of the Court".

<sup>6</sup> By communication of March 20, 2017, the State appointed Mr. Iván Arturo Bazán Chacón, Supranational Deputy Public Prosecutor, as Agent, Mrs. Sofía Janett Donaires Vega, lawyer, and Mr. Sergio Manuel Tamayo Yáñez, lawyer, as Alternate Agents.

<sup>7</sup> Legal Assistance Fund Resolution of victims, available in: [http://www.corteidh.or.cr/docs/asuntos/terrones\\_fv\\_17.pdf](http://www.corteidh.or.cr/docs/asuntos/terrones_fv_17.pdf)

9. *Observations to the preliminary exceptions.*-On August 17, 2017, the Commission and the representatives presented, respectively, their observations on the preliminary objections filed by the State and requested their rejection.

10. *Public audience.* -On February 20, 2018, the President issued an Order in which he summoned the State, the representatives, and the Inter-American Commission to hold a public hearing, on the preliminary objections and possible merits, reparations, and costs, to hear the final oral arguments of the parties, and the final oral observations of the Commission regarding those issues.<sup>8</sup> Likewise, through said Resolution it was ordered to receive statements rendered before a notary public (*affidavit*) of two deponents proposed by the representatives, two witnesses proposed by the State and three expert witnesses, as the case may be, proposed by the Commission and the representatives. On March 7 and 9, 2018, the State and the representatives, and the Commission, respectively, forwarded the affidavits of the deponents. Additionally, pursuant to the aforementioned Resolution, three deponents proposed by the representatives and a witness proposed by the State were summoned to testify at the public hearing. The public hearing was held on March 13 and 14, 2018 during the 122 Regular Period of Sessions of the Court, held at the seat of the Court.<sup>9</sup>

eleven. *Final written arguments and observations.* -On April 16, 2018, the parties and the Commission presented their final written arguments and observations, respectively. The representatives and the State, together with the final written arguments, attached several documents. On April 18, 2018, the Secretariat of the Court, following the instructions of the President, granted the parties and the Commission a period of time until April 30, 2018 to present their observations on said annexes..The State and the Commission reported that they had no observations and the representatives did not submit any brief in this regard.

12. *Victims Fund.*-On June 28, 2018, the Secretariat, following the instructions of the President, and in compliance with Article 5 of the Rules of Procedure of the Inter-American Court on the Operation of the Victims Legal Assistance Fund, informed the State about the disbursements made in application of said Fund in the present case, and it was granted a period of time until July 9, 2018 to submit observations if it so desired. That day the State presented its observations. On July 26, 2018, the Secretariat sent the State the pertinent clarifications.

13. *Test to better solve.*-On September 6, 2018, following the instructions of the President, the State and the representatives were requested, in accordance with Article 58.b) of the Rules of Procedure of the Court, as evidence to facilitate adjudication, the submission of an identity document or any other suitable document for the identification of a person. On September 17, 2018, the representatives forwarded the request, indicating that Mrs. Amadea Tello identifies herself as "Amadea Felipa Tello de Tenicela." For its part, the State stated that it had had difficulties presenting the documentation, since no results had been found regarding the identity of Mrs. "Amadea Tello Barrera" and that it continued to collect the information in the National Registry of Identification and Civil Status (RENIEC). On September 18, the briefs presented were forwarded to the parties and the Commission. On September 20, 2018, the Commission and the State, respectively, forwarded their briefs and indicated

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<sup>8</sup> Resolution of the President of the Court of Convocation of February 20, 2018, available at: [http://www.corteidh.or.cr/docs/asuntos/terrones\\_20\\_02\\_18.pdf](http://www.corteidh.or.cr/docs/asuntos/terrones_20_02_18.pdf)

<sup>9</sup> The following appeared at this hearing: a) for the Inter-American Commission: Silvia Serrano Guzmán, lawyer of the Executive Secretariat of the Commission; b) for the representatives: Christian Henry Huaylinos Camacuari, Coordinator of the Legal Area of the Association for Human Rights; Diana Carvajal Figueroa, Volunteer Legal Adviser of Abogados sin Fronteras and Dania Coz Barón, Coordinator of the Legal Area of the Human Rights Commission, and c) for the State: Sofía Janett Donaires Vega, Supranational Specialized Deputy Public Prosecutor and Alternate Agent; Sergio Manuel Tamayo Yáñez and Silvana Lucía Gómez Salazar, lawyers from the Supranational Specialized Public Prosecutor's Office and Alternate Agents.

They had no observations. However, the State made several clarifications regarding the documentation.

14. *Deliberation of the present case.* -The Court began deliberating this Judgment on September 24, 2018.

## II COMPETENCE

15. The Court is competent to hear this case, under the terms of article 62.3 of the American Convention, since Peru has been a State Party to the Convention since July 28, 1978, and recognized the contentious jurisdiction of the Court on January 21, 1981.

## IV. PRELIMINARY EXCEPTIONS

16. The State presented three preliminary objections, namely: a) lack of exhaustion of remedies in the domestic jurisdiction; b) lack of competition *ratione temporis* of the Court regarding the CIDFP, and c) lack of jurisdiction *ratione temporis* of the Court regarding the CIPST.

### A. Exception of lack of exhaustion of remedies

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

17. The *State* argued that the alleged victims had not exhausted domestic remedies for non-compliance with the provisions of Article 46.1.a) of the Convention, and argued that it was timely argued in the admissibility stage before the Commission. He pointed out that, contrary to what was stated by the Commission in the respective Admissibility Reports, none of the exceptions provided for in Article 46.2 of the Convention is applicable. He said that in the case of Wilfredo Terrones Silva, the petition was submitted to the Commission on August 28, 1992, that is, only two days after he was last seen. In the case of Teresa Díaz Aparicio, the petition was filed only nine days after her disappearance, This makes it clear that domestic remedies had not been exhausted at the time the petitions were filed. He added that the foregoing did not allow the State, through its different jurisdictional bodies, to rule on the alleged damages. He stated that he has initiated new investigations in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio and Néstor Rojas Medina, against those found responsible for the crime of forced disappearance. As for Santiago Antezana Cueto, he initiated a new investigation regarding the crime of torture Teresa Díaz Aparicio and Néstor Rojas Medina, against those found responsible for the crime of forced disappearance. As for Santiago Antezana Cueto, he began a new investigation regarding the crime of torture Teresa Díaz Aparicio and Néstor Rojas Medina, against those found responsible for the crime of forced disappearance. As for Santiago Antezana Cueto, he began a new investigation regarding the crime of torture<sup>10</sup>. In the case of Cory Clodolia, Tenicela Tello indicated that there is a criminal investigation underway.<sup>eleven</sup>. Finally, he indicated that the representatives can participate in the criminal proceedings.

18. The *Commission* argued that the State raised the preliminary objection opportunistically during the admissibility stage and that it analyzed compliance with the requirement of exhaustion of remedies for the moment of admissibility of the different petitions, based on the

<sup>10</sup> During the public hearing, the State indicated that there is "a final judgment in the domestic jurisdiction, issued by the National Criminal Chamber in December 2013 and that it was confirmed by the Supreme Court of Justice, in which it was established that Mr. Antezana Cueto was arrested, transferred to the Acobamba military base, and his enforced disappearance occurred, among other matters. [...] In this sense, in this case the State sustained[u] that the principle of subsidiarity and complementarity must be applied."

It indicated that in said investigation, on October 10, 2016, the National Criminal Chamber ordered the remission of the records of the process to the corresponding Superior Prosecutor's Office. Along these lines, the State argued that it is clear that the respective domestic remedies have not been exhausted in this case.



information available up to that moment, in accordance with conventional norms and, in accordance with what has been established by the Court on the matter. It indicated that the passage of so many years since the forced disappearances without the whereabouts of the alleged victims having been determined and without there being a definitive decision establishing what happened and punishing those responsible, has not been justified by the State, through an argument that allows linking a delay of such magnitude with the alleged complexity of the cases. Therefore, it indicated that the exception of unjustified delay is applicable, in the terms of Article 46.2.c) of the Convention. As for what was alleged by the State with respect to Cory Clodolia Tenicela Tello, he indicated that he considered the existence of an expanded criminal investigation, which was still in the stage of criminal investigation, without having justified its delay. Regarding the State's argument that in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, and Santiago Antezana Cueto, domestic remedies were not exhausted because "new" investigations were opened, the Commission indicated that these were supervening situations that occurred when the case was already in the merits stage or in the transition stage prior to being sent to the Court. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible. Regarding the State's argument that in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, and Santiago Antezana Cueto, domestic remedies were not exhausted because "new" investigations were opened, the Commission indicated that these were supervening situations that occurred when the case was already in the merits stage or in the transition stage prior to being sent to the Court. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible. Regarding the State's argument that in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, and Santiago Antezana Cueto, domestic remedies were not exhausted because "new" investigations were opened, the Commission indicated that these were supervening situations that occurred when the case was already in the merits stage or in the transition stage prior to being sent to the Court. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible. Néstor Rojas Medina and Santiago Antezana Cueto domestic remedies were not exhausted because "new" investigations were opened, the Commission indicated that these are supervening situations that occurred when the case was already in the merits stage or in the transition stage prior to being sent to the Court. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible. Néstor Rojas Medina and Santiago Antezana Cueto domestic remedies were not exhausted because "new" investigations were opened, the Commission indicated that these are supervening situations that occurred when the case was already in the merits stage or in the transition stage prior to being sent to the Court. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible. It stated that this type of supervening procedural situations cannot have the effect of retroactively modifying compliance with the admissibility requirements. Finally, the Commission requested that the exception be declared inadmissible.

19. **Representatives** They stated that the objection raised by the State has no legal basis, since it is facing an extemporaneous preliminary objection. They maintained that the State, in the various briefs submitted to the Commission, did not in any of the cases allege non-compliance with the requirement of exhaustion of domestic remedies. They argued that having concluded the admissibility examination (Articles 46 and 47 of the Convention) and the principle of procedural estoppel had operated, the State desisted from making use of this exception. They indicated that the State did not mention the specific remedies that it considers have not been exhausted, nor has it shown that said remedies are adequate or that the State was able to respond without undue delay. They added that it was not appropriate to wait for the exhaustion of domestic remedies in a case in which, since the events occurred, the slowness of the investigation and its lack of concrete results constitute a clear case of unjustified delay. The fact that the investigations are in progress cannot mean that the Court is not empowered to analyze the case, because this would allow the State to conduct ineffective and ineffective investigations and internal judicial proceedings, unreasonably prolonging them in order to avoid the intervention of the organs of the Inter-American System. Therefore, they asked the Court to declare the preliminary objection inadmissible, applying the exceptions established in Articles 46.2.a), 46.2.b) and 46.2.c) of the American Convention. The fact that the investigations are in progress cannot mean that the Court is not empowered to analyze the case, because this would allow the State to conduct ineffective and ineffective investigations and internal judicial proceedings, unreasonably prolonging them in order to avoid the intervention of the organs of the Inter-American System. Therefore, they asked the Court to declare the preliminary objection inadmissible, applying the exceptions established in Articles 46.2.a), 46.2.b) and 46.2.c) of the American Convention. The fact that the investigations are in progress cannot mean that the Court is not empowered to analyze the case, because this would allow the State to conduct ineffective and ineffective investigations and internal judicial proceedings, unreasonably prolonging them in order to avoid the intervention of the organs of the Inter-American System. Therefore, they asked the Court to declare the preliminary objection inadmissible, applying the exceptions established in Articles 46.2.a), 46.2.b) and 46.2.c) of the American Convention. unreasonably prolonging them in order to avoid the intervention of the organs of the Inter-American System. Therefore, they asked the Court to declare the preliminary objection inadmissible, applying the exceptions established in Articles 46.2.a), 46.2.b) and 46.2.c) of the American Convention. unreasonably prolonging them in order to avoid the intervention of the organs of the Inter-American System. Therefore, they asked the Court to declare the preliminary objection inadmissible, applying the exceptions established in Articles 46.2.a), 46.2.b) and 46.2.c) of the American Convention.

## A.2. Considerations of the Court

20. The Court has indicated that Article 46.1.a) of the Convention establishes that, in order to determine the admissibility of a petition or communication presented before the 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>12</sup>.

21. The State indicated before the Court that it opportunely argued in the admissibility stage before the Commission the failure to exhaust domestic remedies in the cases. In this regard, in its observations on the preliminary objections, the Commission indicated that the preliminary objection of non-exhaustion of domestic remedies was raised by

<sup>12</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions*. Judgment of June 26, 1987. Series C No. 01, para. 85, and *Case of Amrhein et al. v. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of April 25, 2018. Series C No. 354, para. 39.

the State at the appropriate procedural moment<sup>13</sup>. In view of this, the representatives maintained that the State, in the various briefs submitted to the Commission, did not allege non-compliance with the requirement of exhaustion of domestic remedies in any of the cases, for which reason they indicated that the objection raised is time-barred.

22. The Court notes, from the examination of the file on the processing of the cases before the Commission, that in the case of Wilfredo Terrones Silva, the State, in its communication No. 7-5-M/421 of August 24, 1998, as well as in its attached report called "Consolidated Report", requested that "[the] petition be declared inadmissible because domestic remedies have not been exhausted."<sup>14</sup> In addition, it presented report No. 212-2011-JUS/PPES of May 18, 2011, where it argued that "investigations, proceedings, and efforts to better clarify the facts denounced continue at internal headquarters."<sup>fifteen</sup> In the case of Cory Clodolia Tenicela Tello, in its communication No. 7-5-M/510 of August 10, 2010, the State attached report No. 240-2010-JUS/PPES, in which it indicated that "given that [the investigation] is still pending, that is, the ruling by the Judiciary is pending, it requests the [illustrious] Commission to declare the inadmissibility of the petition, in accordance with articles 46.1.a) and 48.1.b)"<sup>16</sup>. On the other hand, in the cases of Santiago Antezana Cueto<sup>17</sup>, Teresa Diaz Aparicio<sup>18</sup>

and Nestor Rojas Medina<sup>19</sup>, in their communications before the Commission regarding said cases

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<sup>13</sup> Although the Commission in all cases determined the unjustified delay of the investigation in application of Article 46.2.c) of the American Convention (*suprapara*. 18), this Court recalls that in accordance with its jurisprudence "for a petition or communication to be admitted by the Commission", it must be required "the exhaustion of remedies by the time the petition is admissible and not by the time it is presented. *Cf. Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2015. Series C No. 297, para. 25, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 41.

<sup>14</sup> State communication. Note No. 7-5-M/421 August 24, 1998. Consolidated Report (file of procedure before the Commission, fs. 963 to 967).

<sup>fifteen</sup> State communication. Note No. 7-5-M/314 of May 18, 2011. Report No. 212-2011-JUS/PPES, of the Supranational Specialized Public Prosecutor of Peru, indicated that: "[t]he Peruvian State continues with the internal investigations" (file of proceedings before the Commission, fs. 926 to 938).

<sup>16</sup> State communication. Note No. 7-5-M/510 of August 10, 2010. Report No. 240-2010-JUS/PPES (evidence file on the Merits Report, fs. 559 to 571).

<sup>17</sup> State communication. Note No. 7-5-M/224 of May 12, 2005. State Report No. 47-2005-JUS/CNDH-SE/CESAPI, indicated that: "[t]he complaint is currently being investigated by the Acobamba Mixed Provincial Prosecutor's Office (file processed before the Commission, fs. 3142 to 3144).

<sup>18</sup> Communication from the State of December 7, 2004. Report No. 16-2005-JUS/CNDH-SE/CESAPI of the State of Peru, in which it is concluded that: "it [has] been ordered to open an investigation at the police level [...] under the direction of the Specialized Prosecutor" (file of proceedings before the Commission, fs. 2161 to 2162); State communication. Note No. 7-5-M/111 of February 28, 2005. Report No. 16-2005-JUS/CNDH-SE/CESAPI, prepared, in turn, by the Executive Secretariat of the National Human Rights Council (file of proceedings before the Commission, fs. 2156 to 2158); State communication. Note No. 7-5-M/212 of May 12, 2005. Report No. 51-2005-JUS/CNDH-SE/CESAPI of the State, in which it indicated that: "an investigation has been opened at the level of the Prosecutor's Office and the investigative statements of the complainant are being collected" (file of proceedings before the Commission, fs. 2121 to 2125); State communication. note no. 7-5-M/55 of June 26, 2005. Report 16-2005-JUS/CNDH-SE/CESAPI (file of proceedings before the Commission, fs. 2181 to 2183), and Communication from the State. Note No. 7-5-M/368 of June 13, 2011. Report No. 268-2011-JUS/PPES of the State, in which it indicated that: "[t]he competent instances of the Peruvian system [...] continue" (file of proceedings before the Commission, fs. 2088 to 2095).

<sup>19</sup> State communication. Note No. 7-5-M/093 of February 17, 2005 and Note No. 7-5-M/039 of January 21, 2005. Report No. 13-2005-JUS/CNDH-SE/CESAPI of the State, which concludes that: "[t]he Special Prosecutor's Office, [...] issued] [...] [R]esolution opening a preliminary investigation[,] at the level of said Office cho Prosecutor" (file of proceedings before the Commission, fs. 1736 to 1756); State communication. Note No. 7-5-M/244 of April 25, 2011. Report No. 165-2011-JUS/PPES, of the State, in which it was indicated that: "[t]he Peruvian State, through the Public Prosecutor's Office, continues with the processing of this investigation and has ordered various procedures to be carried out" (evidence file on the Merits Report, fs. 509 to 516); State communication. Note No. 7-5-M/316 of May 18, 2011. Report No. 211-2011-JUS/PPES of the State of Peru, concludes that: "The Peruvian State continues internally with the investigations, proceedings and efforts to better clarify the facts denounced" (file of proceedings before the Commission, pages 1675 to 1686), and Communication from the State. Note No. 7-5-M/600 of August 31, 2011. Report No. 450-2011-JUS/PPES of the

In general, it argues that investigations are carried out in the domestic jurisdiction, without the State expressly mentioning the exception of non-exhaustion of domestic remedies. In addition, in none of the five cases did the State allege the specific remedies that it considered had not been exhausted, nor did it indicate which were the adequate and effective remedies, it only limited itself to indicating that there were ongoing investigations. In consideration of the foregoing and in accordance with the jurisprudence of this Court<sup>twenty</sup>, the Court deems that the State did not raise the preliminary objection during the admissibility process and, therefore, the present objection was filed by the State extemporaneously.

23. In accordance with the foregoing, the Court dismisses the objection of failure to exhaust domestic remedies, in relation to the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto.

## **B. Exception for lack of jurisdiction *ratione temporis* of the 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**

24. The **State** maintained that the events alleged by the petitioners occurred between May 15, 1984, and October 2, 1992, that is, before Peru ratified the Inter-American Convention on Forced Disappearance of Persons. Therefore, he argued that by virtue of the principle of non-retroactivity, the Court cannot apply it to these cases.

25. The **Commission** After analyzing the applicable standards and the situation of the specific cases, it argued that there were sufficient reasons to classify what happened to Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela Tello as a forced disappearance perpetrated by state agents, "which continues to be committed to date[,] since the fate or whereabouts of none of the victims has been established." In this sense, and given the continuous nature of forced disappearance, recognized by the Court, the Commission concluded that this Court has temporary jurisdiction to rule on the CIDFP.

26. The **representatives** They indicated that the Court has already ruled repeatedly on the same preliminary objection in cases of forced disappearances in Peru. They argued that it is a continuous or permanent violation, for which reason the Court is competent to rule on violations of the duty to duly investigate complaints of forced disappearance even when the disappearance and the investigation had begun before the entry into force. Therefore, they asked the Court to declare the claim unfounded.

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State of Peru, in which it was indicated that: "[t]he State demonstrates compliance with its international obligations to investigate" (file of proceedings before the Commission, fs. 1639 to 1657).

The Court has established "clear guidelines for analyzing a preliminary objection based on an alleged breach of the requirement of exhaustion of domestic remedies. First, it has interpreted the exception as a defense available to the State, and as such, it can waive it, either expressly or tacitly. Second, this exception must be presented in a timely manner so that the State can exercise its right to defense. Third, the Court has affirmed that the State that presents this exception must specify the internal remedies that have not yet been exhausted and demonstrate that these remedies are applicable and effective. *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions, supra*, para. 88, and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 15, 2018. Series C No. 353, para. 49. In addition, "[c]onfirming, in this same sense, that "it is not for the Court or the Commission to identify *ex officio* what are the domestic remedies pending exhaustion. For this reason, it is not up to the international bodies to remedy the lack of precision in the State's allegations." *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 Amrhein et al. v. Costa Rica, supra*, para. 39.

preliminary objection raised.

## B.2. Considerations of the Court

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

28. The Court has sustained on repeated occasions, including the cases *Osorio Rivera and others and Tenorio Roca and others*, both against Peru, that the Inter-American Convention on Forced Disappearance is applicable to those acts that constitute violations of a continuous or permanent nature, such as the forced disappearance of persons, whose execution began before the entry into force of the treaty and which 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>. 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>24</sup>

29. Based on the foregoing, the Court does not find elements that justify departing from its jurisprudence and, therefore, rejects the preliminary objection presented 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.

## C. Exception for lack of competence *ratione temporis* of the Inter-American Court regarding the Inter-American Convention to Prevent and Punish Torture

### C.1. Arguments of the State and observations of the Commission and the representatives

30. The **State** maintained that the acts of torture alleged in this case with respect to Santiago Antezana Cueto occurred before the State ratified the CIPST and even before its approval by the States parties. He argued that the Court cannot exercise its contentious jurisdiction to declare the violation of the CIPST norms, and asked that the exception be declared well founded.

31. The **Commission** considered the responsibility of the State for the violation of articles 1, 6 and 8 of said instrument, as a result of the lack of a diligent and effective investigation regarding torture and cruel, inhuman and degrading treatment, to the detriment of

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<sup>21</sup> This article establishes: "[t]he present Convention shall enter into force for the ratifying States on thirtieth day from the date on which the second instrument of ratification was deposited. For each State which ratifies or accedes to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which such State deposited its instrument of ratification or accession."

<sup>22</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, para. 33, and *Case of Tenorio Roca et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 22, 2016. Series C No. 314, para. 31.

<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 Munárriz Escobar et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 20, 2018. Series C No. 355, para. 19.

<sup>24</sup> Cf. *Case of Radilla Pacheco v. United Mexican States. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 24, and *Case of Munárriz Escobar et al. Peru, supra*, para. 19.

Santiago Antezana Cueto, which took place on a date prior to the ratification of the CIPST. It concluded that the preliminary objection is inadmissible and the Court is competent to apply the CIPST regarding the facts related to the lack of investigation and punishment of those responsible for the torture, to the detriment of Santiago Antezana Cueto, from the date on which the State ratified said international treaty.

32. The **representatives** They indicated that they did not allege the violation of the CIPST with respect to the torture suffered by Santiago Antezana Cueto during his detention in 1984, but rather with respect to the international obligations to investigate cases of torture that the State assumed since the entry into force of the CIPST. They requested that the Court analyze the facts from the entry into force of said treaty. For this reason, they stated that the obligation of the State to investigate and punish those responsible for the acts of torture, to the detriment of Santiago Antezana Cueto, should be analyzed in light of the obligations emanating from the CIPST, in particular articles 1, 6 and 8.

## C.2. Considerations of the Court

33. The State ratified the Inter-American Convention to Prevent and Punish Torture and deposited the ratification document with the General Secretariat of the Organization of American States on March 28, 1991.<sup>25</sup> The treaty entered into force for Peru, in accordance with its Article XX, on April 27, 1991. Based on this and on the principle of non-retroactivity, codified in Article 28 of the Vienna Convention on the Law of Treaties of 1969, the Court may take cognizance of the acts or facts that have taken place after the date of entry into force of said treaty for the State.<sup>26</sup> and that have generated instantaneous and continuous or permanent violations of human rights.

34. Consequently, as it has done in other cases<sup>27</sup>, the Court determines that it does have temporal jurisdiction to analyze the alleged violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture regarding the alleged omission to investigate the facts after April 27, 1991. Therefore, the Court rejects the preliminary objection raised by the State.

## V

### PRIOR CONSIDERATION

#### TO. Regarding the determination of the alleged victims

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

35. The **State**, in its answer, pointed out the lack of clarity regarding the determination of the next of kin who have been considered as alleged victims by the Commission, since it indicated that it is up to this body to individualize and identify the next of kin, which will have an impact on the possible reparations that the Court will order. For this reason, it referred to "the beneficiaries of the reparations that have been identified by the representatives," and presented its observations, namely: a) regarding Wilfredo Terrones Silva, they requested the inclusion of Guillermina Frida Landázuri Gómez (de Terrones), wife of the alleged victim, and Wilfredo Terrones Landázuri, son of the alleged victim; b) regarding

<sup>25</sup> Instrument of ratification of the Inter-American Convention to Prevent and Punish Torture by Peru. Available in: <http://www.oas.org/juridico/spanish/firmas/a-51.html>

<sup>26</sup> *Case of Tibi vs. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of September 7, 2004. Series C No. 114, para. 61, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of September 1, 2016. Series C No. 316, para. 17.

<sup>27</sup> *Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, Reparations and Costs.* Judgment of 8 July 2004. Series C No. 110, para. 196, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 18.

Teresa Díaz Aparicio, the Merits Report refers to the names Alberto Díaz Uriarte and Graciela Aparicio Pastor, father and mother of the alleged victim, now deceased. It also establishes that the alleged victim had two brothers, Federico Díaz Aparicio and Roberto Levi Aparicio, who died after the disappearance of the alleged victim. The representatives indicated that Mrs. Díaz Aparicio does not have a surviving next of kin, therefore the State deduces that there is no possibility of including any beneficiary with respect to said alleged victim; c) Regarding Néstor Rojas Medina, the Report on the Merits mentions Marcelina Medina Negrón and Leopoldo Rojas Manuyama as the mother and father of the alleged victim, but that the alleged victim was raised by his mother and her partner, Abelardo Collantes Quiroz<sup>28</sup>, who had a daughter, Tania Collantes Medina. However, the representatives only mentioned Marcelina Medina Negrón and Tania Collantes Medina. Therefore, the State concluded that they renounced the inclusion of the other persons as possible beneficiaries of reparation; d) Regarding Cory Clodolia Tenicela Tello, she did not make any pronouncement in view of the fact that the representatives have not referred to or requested the inclusion of any relative as a possible beneficiary of reparation, therefore, it is assumed that they renounce that possibility, and e) regarding Santiago Antezana Cueto, the representatives indicated as possible beneficiaries her cohabitant, Rosa Carcausto Paco, her brother, Ermilio Antezana Cueto; his cousin, Ofelia Antezana Torre, and his uncle, Máximo Antezana Espeza, who passed away,<sup>29</sup>. In his final arguments, he reiterated the lack of clarity regarding the determination of the next of kin by the Commission.

36. The **Commission** in the Merits Report, it alleged that the following people were alleged victims: a) regarding Wilfredo Terrones Silva, his wife, Guillermina Frida Landázuri Gómez (de Terrones); b) Regarding Teresa Díaz Aparicio, Alberto Díaz Uriarte and Graciela Aparicio Pastor, her father and her mother, and her two brothers, Federico Díaz Aparicio and Roberto Levi Aparicio, all deceased; c) Regarding Néstor Rojas Medina, Marcelina Medina Negrón and Leopoldo Rojas Manuyama, his mother and father, but he was raised by his mother and her partner, Abelardo Collantes Quiroz, and his sister Tania Collantes Medina, as well as his aunts Faustina and Luzmilla Collantes Quiróz; d) Regarding Cory Clodolia Tenicela Tello, his mother Amadea Tello Barrera (hereinafter also “Amadea Felipa Tello de Tenicela” or “Amadea Tello”), his sister Norma Juana Tenicela Tello (hereinafter also Norma Tenicela Tello), his brother Washington Tenicela, and his niece Yorcka Jara Tenicela, and e) with respect to Santiago Antezana Cueto, his cohabitant Rosa Carcausto Paco, his brother, Ermilio Antezana Cueto; her cousin Ofelia Antezana Torre and her uncle Máximo Antezana Espeza, who passed away.

37. For their part, the **representatives** in the pleadings and motions brief, they indicated as alleged victims the persons indicated in the previous paragraph, except for the next of kin of Mrs. Cory Clodolia Tenicela Tello; Regarding Néstor Rojas Medina, they only indicated Marcelina Medina Negrón and Tania Collantes Medina and included, for the first time, Mr. Wilfredo Terrones Landázuri. In addition, they indicated that Mrs. Díaz Aparicio does not have any surviving family member.

## A.2. Considerations of the Court

38. Based on the foregoing, the Court verifies that the Commission included the following persons in its Merits and Admissibility Report: a) regarding Wilfredo Terrones Silva: his wife, Guillermina Frida Landázuri Gómez (de Terrones); b) Regarding Teresa Díaz Aparicio:

<sup>28</sup> The State indicated that the representatives of the alleged victims made reference to the fact that “[t]he RENIEC Consultation Report for Mr. Abelardo Collantes Quiroz contains an indication of his death.” (merits file, ESAP, f. 432).

<sup>29</sup> Namely: Cleofeta Torre Areche and her children Ofelia, Juan, Rudy, Nelly and Teófila (deceased), all surnamed Antezana Torre.

his father, Alberto Díaz Uriarte and his mother, Graciela Aparicio Pastor, and his two brothers, Federico Díaz Aparicio and Roberto Levi Aparicio, all deceased. According to her representatives, Mrs. Díaz Aparicio does not have any surviving family member; c) regarding Néstor Rojas Medina, Marcelina Medina Negrón and Leopoldo Rojas Manuyama, her mother and her father, Abelardo Collantes Quiroz; and her sister Tania Collantes Medina, as well as her aunts Faustina and Luzmilla, whose surnames are Collantes Quiróz; d) regarding Cory Clodolia Tenicela Tello: her mother Amadea Tello Barrera, her sister Norma Juana Tenicela Tello, her brother Washington Tenicela Tello, and her niece Yorka Jara Tenicela, and e) regarding Santiago Antezana Cueto: her cohabitant, Rosa Carcausto Paco; his brother, Ermilio Antezana Cueto; his cousin, Ofelia Antezana Torre, and her uncle, Máximo Antezana Espeza,

39. Therefore, all the persons included in the Merits and Admissibility Report of the Commission meet the requirement set forth in Article 35.1 of the Regulations.<sup>30</sup> Therefore, the Court considers as presumed victims of this case the persons named in said Report, who were indicated in the previous paragraph. Mr. Wilfredo Terrones Landázuri, who was not included in the aforementioned Report, will not be considered as an alleged victim, since said requirement was not met, since the representatives alluded to him in that condition, for the first time, in the pleadings and motions brief.

## SAW PROOF

### A. Admissibility of documentary evidence

40. This Tribunal received various documents presented as evidence by the Commission, the representatives and the State, attached to their main briefs and as helpful evidence (*supraparas.* 6, 7, 11 and 13). In the present case, as in other<sup>31</sup>, the Court admits the probative value of those documents presented at the due procedural opportunity by the parties and the Commission, as well as that presented by the representatives at the request of the Court, as evidence to facilitate adjudication, in accordance with Article 58.b), which were not contested or challenged, and whose authenticity was not questioned. Notwithstanding this, some pertinent considerations are made.

### B. Admissibility of expert statements and opinions

41. The Court finds it pertinent to admit the statements and testimony rendered at 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 to receive them (*suprapara.* 10) and for the purpose of this case<sup>32</sup>.

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<sup>30</sup> Article 35(1) of the Rules of Procedure of the Court establishes that the case will be submitted to it by presenting the Merits Report, which must contain "the identification of the alleged victims." It is therefore up to the Commission to accurately identify the presumed victims in a case before the Court at the proper procedural opportunity, so that after the Merits Report it is not possible to add new presumed victims, except in the exceptional circumstances contemplated in Article 35(2) of the Rules of Court. Therefore, in application of Article 35, the content of which is unequivocal, it is consistent jurisprudence of this Court that the alleged victims must be indicated in the Merits Report provided for in Article 50 of the Convention. *cf. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of VRP, VPC and others v. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 350, para. 47.

<sup>31</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Background.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of VRP, VPC et al. v. Nicaragua, supra*, para. 59.

<sup>32</sup> The Court received the statements rendered before a notary public (*affidavit*) of Ofelia Antezana Torre and Tania Collantes Medina, proposed by the representatives, and of the witnesses Marcelita del Rosario Gutiérrez Vallejos and Mariela Romina Estacio Aguirre, proposed by the State; of the expert Michael Reed Hurtado, proposed by the

42. The State presented different observations, which it requested to be appreciated by the Court, regarding the statements made by Wilfredo Ricardo Terrones Landázuri (hereinafter also “Wilfredo Terrones Landázuri”) and Rosa Carcausto Paco.

43. The **Court** considers that the State's observations question the probative weight of the statements, which does not create a problem regarding their admissibility. This Court admits the statements of Wilfredo Terrones Landázuri and Rosa Carcausto Paco and for its assessment it will take into account their status as a relative of the alleged disappeared victim or alleged victim, respectively, and the pertinent observations of the State, as well as the body of evidence.

44. This Tribunal notes that in its final written arguments, the State referred to the suitability of the expert witness Carlos Alberto Jibaja Zárate and the expert witnesses Carmen Wurst Calle de Landázuri and Yovana Pérez Clara, and the relevance, scope and content of the expert opinions rendered by the aforementioned expert witness, as well as regarding Michael Reed Hurtado. Regarding its observations on the suitability of the aforementioned expert witnesses, the Court refers to the resolution of the Order of the President of the Call of February 20, 2018 (*suprapara*. 10). Regarding the other observations, the Court understands that the State is not contesting their admissibility, but that the observations are related to the probative weight and scope thereof. Consequently, this Court admits the expert opinions of Michael Reed Hurtado, Carlos Alberto Jibaja Zárate, Carmen Wurst Calle de Landázuri and Yovana Pérez Clara, which will be considered as long as they conform to the purpose ordered and taking into account the State's observations.

## VII FACTS

45. The Court will then explain, firstly, the contextual framework, and secondly, the personal and family circumstances of the alleged victims, as well as the events that occurred to each one of them and the different police and jurisdictional investigations initiated.

### A. Context

46. 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 alleged facts 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>33</sup> on the context related to the armed conflict in Peru, in which

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Commission; the expert witness Carlos Alberto Jibaja Zárate and the expert witness Carmen Wurst Calle de Landázuri, and the expert witness Yovana Pérez Clara, proposed by the representatives. Regarding the evidence provided at the public hearing, the Court received the statements of Wilfredo Terrones Landázuri, Rosa Carcausto Paco and Marcelina Medina Negrón, proposed by the representatives, and the witness Luis Enrique García Westphalen, proposed by the State.

<sup>33</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 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*. Judgment of November 25, 2006. Series C No. 160; *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 Anzaldo 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, supra*; *Case J v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Espinoza González v. Peru. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 20, 2014. Series C No. 289; *Cruz case*



frame the facts of this case.

47. 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 the responsibilities of the terrorist violence and the violation [of] human rights produced from May 1980 to November 2000, attributable to both terrorist organizations and agents of the State, as well as proposing initiatives aimed at affirming peace and harmony among Peruvians.”<sup>3. 4.</sup>

48. 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 also “Sendero Luminoso” or “PCP-SL”) and the Movimiento Revolucionario Túpac Amaru (hereinafter also “MRTA”), as “one of the main counter-subversive mechanisms”<sup>35</sup>, becoming a “systematic or widespread practice”<sup>36</sup> depending on the period<sup>37</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>38</sup>.

49. The *modus operandi* followed by the perpetrators of the disappearances 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 State resources. 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>39</sup> These stages did not necessarily occur consecutively.<sup>40</sup>

50. The generalized or systematic practice of forced disappearances was also favored by the generalized 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>41</sup>

51. On the other hand, according to the Truth and Reconciliation Commission of Peru, the Association of Democratic Lawyers was created by a subversive group to take charge of

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*Sánchez and others v. Peru. Preliminary Exceptions, Merits, Reparations and Costs.* Judgment of April 17, 2015. Series C No. 292; *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, and *Case of Tenorio Roca et al. v. Peru, supra*.

<sup>3. 4.</sup> Cf. *Case of Baldeón García v. Peru, supra*, para. 72.1; *Case of Tenorio Roca et al. v. Peru, supra*, and *Case of Pollo Rivera et al. v. Peru. Merits, Reparations and Costs.* Judgment of October 21, 2016.

<sup>35</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume VI, *Chapter 1.2. enforced disappearances*, p. 102, available at: <http://www.cverdad.org.pe/ifinal/>

<sup>36</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 73.

<sup>37</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 75. In the years 1983 and 1984,

It recorded 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 used systematically by state agents as a counter-subversive mechanism.

<sup>38</sup> Cf. *Case of Osorio Rivera and family v. Peru, supra*, para. 54, and Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 70.

<sup>39</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 84. Truth and

<sup>40</sup> Reconciliation Commission, Final Report, 2003, *supra*, p. 84. Cf. *Case of La Cantuta v.*

<sup>41</sup> *Peru, supra*, para. 58.

of the legal defense of its imprisoned militants<sup>42</sup>. In this regard, the State itself acknowledges the direct relationship between SL-PCP and the Association of Democratic Lawyers, affirming that said association "acted [as] 'organism[...]' gri[s]' or 'front'[.] whose function was] to provide legal advice and assume the legal defense of Senderistas." It also indicated that "between the 1980s and 1990s, the work of this group gained importance and relevance, when state agents, through intelligence work, specialized in the tasks of searching, investigating, and capturing terrorists." According to the State, said organization of lawyers ensured "the achievement of terrorist purposes," since those who belonged to Democratic Lawyers also belonged to Sendero Luminoso.<sup>43</sup>

52. in thatConcerning universities as a flank of state repression, between the years 1980 and 1995 the universities were in convulsion, becoming one of the main areas of the internal armed conflict in Peru. In addition, they were referential institutions in the emergence of the Communist Party of Peru, Shining Path, being a strategic space both for the dissemination of its ideology and for the recruitment of militants among its students and teachers. This caused the universities to be stigmatized and violated by both the subversive groups and the State.<sup>44</sup>

53. In the years 1988 and 1989 at the National University of San Marcos(hereinafter also "UNMSM")and the Enrique Guzmán y Valle National University of Education (hereinafter also "the Cantuta")deaths, disappearances of students and teachers were recorded and in 1991 military bases were installed at the universities of San Marcos, La Cantuta and the National University of Callao and the Hermilio Valdizán National University<sup>Four. Five</sup>. Besides,In the Report of the Truth and Reconciliation Commission, it is indicated that "[t]he figures reveal that, despite the apparent climate of tranquility that prevailed, it was precisely in 1992 when the selective forced disappearances of students occurred in greater profusion."<sup>46</sup>. In particular, the aforementioned report highlights that "[b]etween 1989 and 1993 there were more than 100 students from different faculties of the National University of Central Peru who disappeared or were murdered."<sup>47</sup>.The year 1992 was the year with the most selective forced disappearances of students<sup>48</sup>.

## **B. Facts regarding each victim**

### **B.1. Wilfredo Terrones Silva**

#### *B.1.1. Personal and family circumstances of Wilfredo Terrones Silva*

54. Wilfredo Terrones Silva was born on September 21, 1939 and lived in the district of Callao, province of Callao<sup>49</sup>. He formed a family with Guillermina Frida Landázuri de Terrones and was the father of Wilfredo Ricardo Terrones Landázuri<sup>fifty</sup>. He practiced as a lawyer in the Association of Democratic Lawyers and defended people accused of the crime of

<sup>42</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume III, *Chapter 3.1. The human rights movement*, p. 298-299, available at: <http://www.cverdad.org.pe/ifinal/index.php>

<sup>43</sup> Brief of Final Arguments of the State of Peru, of April 16, 2017, fs. 1044 to 1045. Truth and

<sup>44</sup> Reconciliation Commission, Final Report, 2003, *supra*, p. 603. Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 633 to 635.

<sup>45</sup> Truth and Reconciliation Commission, Final Report, 2003, Volume V, *Chapter 2.21. University National Center*, p. 685, available at: <http://www.cverdad.org.pe/ifinal/index.php>

<sup>46</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 682, Truth and Reconciliation

<sup>47</sup> Commission, Final Report, 2003, *supra*, p. 687 to 688.

<sup>48</sup> RENIEC, Consultation Report of Wilfredo Terrones Silva (evidence file, annex 17 to the ESAP, f.

<sup>49</sup> 4114).

<sup>fifty</sup> The Commission did not include Wilfredo Terrones Landázuri as an alleged victim (*supra* footnote 1).

terrorism<sup>51</sup>.

### *B.1.2. Disappearance of Wilfredo Terrones Silva*

55. Wilfredo Terrones Silva was last seen on August 26, 1992 when he left his offices<sup>52</sup>. His relatives went to police posts, hospitals and health centers in search of his whereabouts and to date it is unknown.

56. Before his disappearance, Wilfredo Terrones Silva was deprived of liberty in the Chiclayo and El Frontón prisons for five years, for having committed terrorist attacks in the Province of Jaén. The State reported that he was accused of being Sub-Director of the Base and leader of Sendero Luminoso in the province of Jaén.<sup>53</sup> In the proceedings before the Commission, the State reported on April 12, 1993 that said person was not registered in the book of detainees, but that in August 1991 he visited his brother Ricardo Terrones Silva, who was detained for the crime of terrorism.<sup>54</sup>

57. The name of Wilfredo Terrones Silva is registered in the List of Dead and Disappeared Persons Reported to the Truth and Reconciliation Commission 1980-2000<sup>55</sup>.

### *B.1.3. Proceedings in the domestic jurisdiction regarding the disappearance of Wilfredo Terrones Silva*

#### *B.1.3.1. Investigations initiated before the ordinary jurisdiction*

58. On August 28, 1992, his disappearance was reported to the Fifteenth Criminal Prosecutor of Lima. Subsequently, on September 1, 1992, he filed a complaint with the Directorate of Disappeared Persons of the National Police.<sup>56</sup>

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<sup>51</sup> Communication from the petitioners of August 15, 2011 (evidence file, annex 1 to the Merits Report, fs. 6 to 14).

<sup>52</sup> Investigation statement of Wilfredo Ricardo Terrones Landázuri on January 26, 2018 before the Second Supraprovincial Criminal Prosecutor's Office (evidence file, annex 6 to the State's final arguments, fs. 5355 to 5358). Wilfredo Terrones Landázuri declared that his father "sponsored people prosecuted for terrorist crimes, he was even their lawyer" he found out about his father's disappearance "[at] the end of August 1992 when [he was] an inmate at the Castro Castro Prison, when the delegate of the Pavilion named CBT [told him] that he had disappeared, that an alleged colleague of [his] father named JPQ brought him over on August 26, 1992 immediately to the Castro Castro Prison, where [he] was being held, telling him that there was a riot, which is why [his] alarmed father immediately went to the Prison, And so, at the gate of the Prison, unidentified persons kidnapped him because from that day on he was not heard from again. I want [zo] to specify that that day there was no riot or any type of incident, they simply [...] made [his] father come to make him disappear. In addition, [her] mother told [her] that during her inquiries at that time, people who sold flowers around the Castro Castro Prison had told her that they had seen her father arrive and cross the prison entrance gate, but they did not see him leave." In a similar vein, he testified before the Court at the public hearing held in March 2018. they simply [...] made [his] father come to make him disappear. In addition, [her] mother told [her] that during her inquiries at that time, people who sold flowers around the Castro Castro Prison had told her that they had seen her father arrive and cross the prison entrance gate, but they did not see him leave." In a similar vein, she testified before the Court at the public hearing held in March 2018. they simply [...] made [his] father come to make him disappear. In addition, [her] mother told [her] that during her inquiries at that time, people who sold flowers around the Castro Castro Prison had told her that they had seen her father arrive and cross the prison entrance gate, but they did not see him leave." In a similar vein, she testified before the Court at the public hearing held in March 2018.

<sup>53</sup> Note No. 7-5-M/093 of March 19, 1993 (evidence file, annex 3 to the Merits Report, fs. 22 and 23).

<sup>54</sup> Note No. 7-5-M/125 of April 12, 1993 (evidence file, annex 4 to the Merits Report, fs. 25 and 26).

<sup>55</sup> Truth and Reconciliation Commission, Final Report, 2003, *List of Dead and Disappeared Persons Reported to the Truth and Reconciliation Commission 1980-2000*, p. 408, available at: <http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAexo4/ListaMuertosyDesaparecidos.pdf>

<sup>56</sup> These complaints do not appear in the evidence provided by the parties or the Commission. For its part, the State did not dispute its existence. Communication from the petitioners dated August 15, 2011, and on August 28, 1992, a letter was sent to the Colegio de Lima, of which it was a member (evidence file, annex 1 to the Merits Report, fs. 6 to 14). On September 17, 1992, the representatives presented the case of Wilfredo Terrones Silva before the NN Working Group on Forced or Involuntary Disappearances. UU., Requesting said agency to make urgent inquiries to the Peruvian government on the situation of the alleged victim. In communication indicated that Mr. Terrones Silva "left his house in the morning to his office, having

59. in the Part No. 474-IE-DIDCOF of November 5, 1992, it was indicated that the State had “carried out the respective procedures aimed at locating Dr. Wilfredo Terrones Silva[,]” without obtaining positive results.  
57. In Report No. 33 JDCL-DAU-MC of the State of November 11, 1992, it was indicated that National Police personnel appeared on several occasions at the law firm of Mr. Terrones Silva without being able to locate anyone.<sup>58.</sup>

60. On March 19, 1993, the State considered that it must be presumed that Wilfredo Terrones Silva went into hiding because there was no evidence or indication to establish that it was a kidnapping.<sup>59.</sup>

61. On September 22, 2011, the State indicated that it does not have information on the location of Wilfredo Terrones Silva, although various procedures have been carried out.<sup>60</sup> for your search and location  
61, and it is a case to be resolved in the Division of Missing Persons of the Criminal Investigation Directorate of the National Police of Peru (DIRINCRI-PNP). In addition, it indicated that, according to information from the Public Prosecutor's Work Support Information System, in May 2011 there was still a process for the crime of terrorism against him and to date there is an arrest warrant for terrorism in force against him, in File No. 2004-35 of the Judicial District of Lima<sup>62</sup>. He also claimed that there was an investigation at the police level in 2005, in order to locate the alleged victim<sup>63</sup>.

### *B.1.3.2. Proceedings carried out from 2016 before the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves*

62. On July 27, 2016, the Coordination of the Superior National Criminal Prosecutor's Office and the Supraprovincial Criminal Prosecutor's Office of the Public Ministry ordered to reiterate to the corresponding prosecutor's offices the request for information on possible investigations and/or proceedings for the crime against

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served several people. According to the testimony of a client, the victim attended her in her office at 3 in the afternoon, having left him with other people who were waiting to be attended to. (Communication sent by the petitioners to the United Nations Working Group on Enforced or Involuntary Disappearances of September 17, 1992 (evidence file, annex 18 to the ESAP, fs. 4117 and 4118).

<sup>57</sup> Report No. 474- IE-DIDCOF investigations carried out in relation to the disappearance of Attorney Wilfredo Terrones Silva on November 5, 1992 (evidence file, Merits Report, fs. 51 to 52). In turn, in report No. 18-DC-DAU-SIDF, Report on the Disappearance of Dr. Wilfredo Terrones Silva of October 23, 1992, it was indicated that “[r]eviewed the Occurrence and Complaint Books of Calle Común y Reservado [...] that he keeps in this [d]ejection, none have been located that are related to the person of Dr. Wilfredo TERRONES SILVA. Likewise, after reviewing the Record Book of Detainees for this year, said person has not been detained at [...] Police Delegation, for which reason I cannot provide more information on the matter.” (evidence file, annex 6 to the Merits Report, f. 53).

<sup>58</sup> Report No. 33 JDCL-DAU-MC of the State of November 11, 1992 (evidence file, annex 6 to the Background Report, f. 54).

<sup>59</sup> *cf.* Note No. 7-5-M/093 of March 19, 1993, *supra*.

<sup>60</sup> *cf.* Note No. 7-5-M/668 of September 22, 2011 (evidence file, annex 5 to the Report of Fund, fs. 28 to 38. Referring to Report No. 1712-05-DIRINCRI-PNP/DIVIPD-BPD.1 of June 25, 2005 issued by the Missing Persons Division of the Criminal Investigation Directorate of the Peruvian National Police on June 25, 2005.

<sup>61</sup> Note No. 7-5-M/668, *supra*.

<sup>62</sup> Note No. 6437-2011-MP-FN-SEGFIN from the Public Ministry of the National Prosecutor's Office of May 31, 2011 (evidence file, annex 6 to the Merits Report, fs. 40 to 50). The official document describes the existence of the file No. 2004-35 for the crime of terrorism against several people, including Wilfredo Terrones Silva.

<sup>63</sup> Peru submitted to the Commission Report 492-2011-JUS/PPES prepared by the Public Attorney's Office, in the which recounts the proceedings carried out regarding the presumed disappearance of Mr. Terrones Silva, *cf.* Note No. 7-5-M/668, *supra*.

humanity in the form of forced disappearance<sup>64</sup>.

63. As in the other cases, On October 10, 2016, the Coordination of the Superior National Criminal Prosecutor's Office and the Supraprovincial Criminal Prosecutor's Office of the Public Ministry ordered the opening of an investigation for the crime against humanity in the form of forced disappearance for the crimes committed against Mr. Wilfredo Terrones Silva<sup>65</sup>, among others, since the existence of an investigation for such crime and with respect to it had not been determined.

64. According to the Resolution of April 3, 2017 regarding the complaint related to Report No. 5/16 of the Inter-American Commission of April 13, 2016 on Forced Disappearances in Peru regarding Wilfredo Terrones Silva, who reportedly disappeared on August 26, 1992, "no judicial or prosecutorial authority has reported having initiated any investigation, which is why [the] office will proceed to open a fiscal investigation to clarify the denounced fact"<sup>66</sup>.

## B.2. Teresa Díaz Aparicio

### B.2.1. Personal and family circumstances of Teresa Díaz Aparicio

65. Theresa Díaz Aparicio was born on January 12, 1954,<sup>67</sup> and lived in the Rimac district, in the City of Lima, with his mother Graciela Aparicio Pastor<sup>68</sup> and his brothers Federico Díaz Aparicio and Roberto Levi Aparicio<sup>69</sup>. His father was Alberto Díaz Uriarte. She was a graduate of

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<sup>64</sup> *cf.* Resolution of the Coordination of the National Superior Criminal Prosecutor and Supraprovincial Criminal Prosecutors of the Public Ministry of July 27, 2016 (file of proceedings before the Commission, fs. 766 to 767).

<sup>65</sup> *cf.* Resolution of the Coordination of the National Superior Criminal Prosecutor and Supraprovincial Criminal Prosecutors of the Public Ministry of October 10, 2016 (evidence file, annex 47 to the answer, fs. 5085 to 5087), and Official Letter No. 1433-2016 of the Coordination of the National Superior Criminal Prosecutor and Supraprovincial Criminal Prosecutors of the Public Ministry (evidence file, annex 48 to the answer, page 5089).

<sup>66</sup> *cf.* Resolution of the Second Supraprovincial Criminal Prosecutor of Lima of April 3, 2017, which is related to prosecutor file 22-2016 (evidence file, annex 1 to the answer, fs. 4507 to 4510). In addition, according to the statement made by Marcelita del Rosario Gutiérrez Vallejos through affidavit before the Court, the Head Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutor of Lima, stated that the Second Prosecutor's Office is in charge of the preliminary investigation for the crime of Forced Disappearance to the detriment of Wilfredo Terrones Silva. The case of Wilfredo Terrones Silva (No. 506012802-2016-22-0) was heard. According to the Prosecutor, a series of proceedings were ordered, including the statement of Frida Guillermina Landázuri Gómez, Julio Manuel Landázuri Gómez, VRA, CAC, and Wilfredo Ricardo Terrones Landázuri. Frida Guillermina Landázuri Gómez and Julio Manuel Landázuri Gómez were notified twice to give their statement without positive results, which is why on May 30, 2017, they interviewed at the home of those cited the first time. Wilfredo Ricardo Terrones Landázuri was summoned three times, and on January 26, 2018, he declared. Statements by other members of the so-called Colina Group have been scheduled. On March 1, 2018, HGC stated that it was unaware of the disappearance of the victim. Other statements are pending. Information was collected from the morgue and the different hospitals nationwide, which do not record information on Wilfredo Terrones Silva. Not yet as it has not been determined how he disappeared and where his remains could be. It is clarified that in this judgment, initials are indicated to some people whose actions are recorded in documents of internal proceedings and without it appearing that they had any relationship with the processing of the case in the international sphere or any intervention before the Inter-American Commission or the Inter-American Court. Statements by other members of the so-called Colina Group have been scheduled. On March 1, 2018, HGC stated that it was unaware of the disappearance of the victim. Other statements are pending. Information was collected from the morgue and the different hospitals nationwide, which do not record information on Wilfredo Terrones Silva. Not yet as it has not been determined how he disappeared and where his remains could be. 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<sup>67</sup> Birth certificate of Teresa Díaz Aparicio (file of proceedings before the Commission, fs. 2485 and 2486).

<sup>68</sup> Death Certificate of Graciela Aparicio Pastor, died on November 5, 1997 (file of proceedings before the Commission, f. 2200).

<sup>69</sup> Death certificate of Roberto Levi Aparicio, who died on October 21, 2001 (file of proceedings before the Commission, page 2202). On January 27, 2017, the representatives informed the Inter-American Court of the death of Federico Díaz Aparicio on April 12, 2014 (written file of final arguments of the representatives, fs. 105, 189, and 207).

sociology and worked as a professor in the Faculty of Social Sciences of the Universidad Mayor de San Marcos and as a member of the Association of Teachers. He also served as a member of the UNMSM Social and Legal Care Commission, monitoring the situation of detained students and teachers with legal proceedings.<sup>70</sup>

66. Before his disappearance, on March 27, 1989, a search was carried out at the home of Teresa Díaz Aparicio and arrested her<sup>71</sup>. On March 31, 1989, Teresa Díaz Aparicio was investigated regarding the manuscripts seized from her home and her affiliation with Sendero Luminoso.<sup>72</sup> On April 5, 1989, the National Police concluded that "Teresa Díaz Aparicio belongs [...] to the support apparatus of the PCP-SL, in charge of providing accommodation, food, medical assistance and other requirements that are requested by the militants of that subversive-terrorist group."<sup>73</sup> On April 7, 1989, the Provincial Criminal Prosecutor's Office ordered his release, considering that he had no major responsibility.<sup>74</sup>

### *B.2.2. Disappearance of Teresa Díaz Aparicio*

67. Teresa Díaz Aparicio disappeared on August 19, 1992 when she left her home in Rimac, Lima, accompanied by her brother Federico Díaz Aparicio to the bus stop to go to work at the Universidad Nacional Mayor de San Marcos. According to her brother, she never came to work and never contacted her family, friends or co-workers again.<sup>75</sup> Her mother had inquired in a timely manner among her colleagues, her friends as well as other relatives of hers. She had also resorted to hospitals, clinics, the central morgue of Lima and Callao to the police, without having obtained information regarding her whereabouts.<sup>76</sup>

68. Teresa's name Díaz Aparicio is registered in the List of Dead Persons and missing Reported to the Truth and Reconciliation Commission 1980–2000<sup>77</sup>.

### *B.2.3. Statement before the Truth and Reconciliation Commission*

69. On July 31, 2002, his brother Federico Díaz Aparicio gave his testimony before the Commission of Truth and Reconciliation, in which he stated that his family did not report the disappearance of his sister out of fear, since at that time he continued to be monitored by the National Directorate Against Terrorism (hereinafter "DINCOTE") and the mother

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<sup>70</sup> Statement of Teresa Díaz Aparicio on March 31, 1989 (evidence file, annex 7 to the Merits Report, fs. 68 to 80).

<sup>71</sup> Second Supraprovincial Criminal Prosecutor, File No. 11-2007, Part 775-D3-SDIRCOTE of March 28, 1989 (evidence file, annex 8 to the Merits Report, f. 82).

<sup>72</sup> *cf.* Statement by Teresa Díaz Aparicio on March 31, 1989, *supra*.

<sup>73</sup> Note from the Peruvian National Police of April 5, 1989, Part No. 888-D3-SDIRCOTE (file of evidence, annex 9 to the Merits Report, fs. 84 to 102).

<sup>74</sup> Resolution of the Lima Provisional Criminal Prosecutor of April 7, 1989 (evidence file, annex 10 to the Merits Report, f. 104).

<sup>75</sup> Testimonial statement of Federico Díaz Aparicio rendered before the Truth and Reconciliation Commission on July 31, 2002 (evidence file, annex 15 to the Merits Report, fs. 178 to 180).

<sup>76</sup> Official letter No. 124-2005-IN/0105 from the Ministry of the Interior of January 26, 2005 (evidence file, annex 7 to the Merits Report, fs. 175 and 176). On February 10 and October 14, 1993, the State informed the Inter-American Commission that, based on information received from different State agencies, Teresa Díaz Aparicio is not registered as detained or intervened by the Armed Forces or by the different bodies dependent on the PNP, Note No. 7-5-M/336 of October 14, 1993 (evidence file, annex 18 to the Merits Report, f. 19 0). This was reiterated by the State on March 3, 2005 (file of proceedings before the Commission, fs. 2135 to 2136).

<sup>77</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 124.

was in poor health<sup>78</sup>.

#### *B.2.4. Proceedings in the domestic jurisdiction on the disappearance of Teresa Díaz Aparicio*

##### *B.2.4.1. Habeas corpus process for the disappearance of Teresa Díaz Aparicio*

70. On February 25, 2002, Federico Díaz Aparicio filed a writ of habeas corpus for the disappearance of his sister against the Director of DINCOTE and the Minister of Justice.<sup>79</sup> On February 27, 2002, the 19th Criminal Court of Lima declared it inadmissible, considering that "the arrest of Teresa Díaz Aparicio arose in the year ninety[and two], that the plaintiff does not know where her sister is currently, that it is manifestly impossible that since the year ninety[two] the person favored by this action has been detained in the D[INCOTE], for the reasons set forth above and resulting that the guarantee action[s] filed is manifestly inadmissible, the action of Habeas Corpus filed is declared INADMISSIBLE [...]"<sup>80</sup>.

71. On March 7, 2002, Federico Díaz Aparicio filed an appeal against the resolution of February 27, 2002, arguing that "it is public knowledge [that] from 1990 to 2001 no one could make use of this right and there are documents that [his] sister was persecuted as a terrorist without being one, it is appropriate to admit the Action of Habeas Corpus."<sup>81</sup> On March 8, 2002, the 19th Criminal Court of Lima granted the appeal, submitting the proceedings to the superior<sup>82</sup>. On March 21, 2002, the First Criminal Chamber of the Superior Court of Justice of Lima decided to admit the guarantee action in order to carry out an investigation.<sup>83</sup> On May 3, 2002, the 19th Criminal Court of Lima declared the habeas corpus action unfounded because there is no record that shows that the alleged victim was detained by State security agents or that she is detained or that she is being held in a penitentiary center.<sup>84</sup> Federico Díaz Aparicio filed a new appeal against this decision on May 23, 2002, because the performance of the necessary evidence in said action had not been exhausted, therefore the resolution is unfair and illegal<sup>85</sup>.

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<sup>78</sup> Witness statement of Federico Díaz Aparicio on July 31, 2002, *supra*, and Notification to the State of the complaint for the forced disappearance of Teresa Díaz Aparicio (evidence file, file pending before the Commission, fs. 2233 to 2238). On August 28, 1992 Rodolfo Asencio Martel, Federico Díaz Aparicio and the Association for Human Rights presented the petition before the Commission for the detention and disappearance. On September 2, 1992, the Commission notified the State of the petition regarding the alleged forced disappearance of Teresa Díaz Aparicio. In its Report on the situation of Human Rights in Peru of March 12, 1993, the Commission expressed concern over reports of the disappearance of various persons between May and August 1992, including the alleged victim. *cf.* IACHR, Second Report on the Situation of Human Rights in Peru, March 12, 1993, paragraph 90, available at: [www.cidh.org/countryrep/Peru93sp/iii.htm](http://www.cidh.org/countryrep/Peru93sp/iii.htm).

<sup>79</sup> *cf.* Habeas corpus petition filed by Federico Díaz Aparicio on February 27, 2002 (file of proceedings before the Commission, fs. 2749 to 2752). The habeas corpus is dated February 25, 2002, and it is clear that it was presented on the 27th of the same month and year.

<sup>80</sup> Decision No. 1 of the Tenth Criminal Court of Lima of February 27, 2002 (evidence file, annex 20 to the Merits Report, fs. 196 and 197).

<sup>81</sup> *cf.* Appeal challenged by Federico Díaz Aparicio before the 19th Criminal Court of Lima on March 6, 2002 (evidence file, annex 21 to the Merits Report, fs. 199 and 200). The appeal is dated March 6, 2002, and it is clear that it was filed on the 7th of the same month and year.

<sup>82</sup> *cf.* Nineteenth Criminal Court of Lima, Judicial Notification Certificate No. 06-02 habeas corpus of March 8, 2002 (evidence file, annex 22 to the Merits Report, f. 202).

<sup>83</sup> Resolution No. 137-"A" File No. 108-02-HC of the First Criminal Chamber of March 21, 2002 (evidence file, annex 23 to the Merits Report, fs. 204 and 205).

<sup>84</sup> Judicial Resolution of the Nineteenth Criminal Court of Lima of May 3, 2002 (evidence file, annex 24 to the Merits Report, fs. 207 and 208).

<sup>85</sup> Appeal filed before the 1st Criminal Chamber of Lima on May 23, 2002 (file of procedure before the Commission, f. 2658).

72. On May 30, 2002, the First Chamber of the Superior Court of Justice confirmed the ruling that declared the habeas corpus action unfounded, and at the same time issued a mandate to the Provincial Prosecutor's Office to proceed to investigate and clarify the complaint, according to its attributions against indications of the commission of the crime against Humanity in the modality of Forced Disappearance of Persons to the detriment of Teresa Díaz Aparicio<sup>86</sup>.

*B.2.4.2. Preliminary investigation before the Provincial Prosecutor's Office Specialized in Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves and the Second Supraprovincial Criminal Prosecutor's Office (different prosecutors were in charge of the investigation)*<sup>87</sup>

73. On September 11, 2002, the Special Prosecutor's Office for Forced Disappearances, Extrajudicial Executions, and Exhumations of Clandestine Graves of the Public Ministry (hereinafter also "Specialized Prosecutor's Office for Forced Disappearances") ordered the opening of the investigation and the carrying out of various procedures.<sup>88</sup> On March 7, 2003, it was ordered to open an investigation at the police level for a term of 30 days under the direction of said Prosecutor's Office, evidence was collected and information was requested from different State agencies.<sup>89</sup>

74. On April 7, 2004, the Criminal Investigation Directorate of the Homicide Department of the National Police carried out some procedures and indicated that "since Teresa Díaz Aparicio was detained by DINCOTE-PNP personnel in March 1989, there is no information to date that suggests that she was intervened by the police or a person from the Armed Forces, nor has it been possible to prove that she is currently dead. However, due to the way in which he disappeared and distanced himself from his family, breaking all contact with them, it is presumable and in consideration of his alleged links with the terrorist organization SL, he went into hiding to join said subversive group, not ruling out the possibility that he left the country and to date carries out proselytizing activities abroad."<sup>90</sup>

75. On January 10, 2005, the Special Prosecutor for Forced Disappearances ordered to carry out others complementary proceedings, among them, to summon relatives of Mrs. Díaz Aparicio, people detained with her in 1989 and professors who worked in the Faculty of Social Sciences of the UNMSM<sup>91</sup>.

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<sup>86</sup> Resolution 301 "A" of the First Chamber of the Superior Court of Justice of May 30, 2002 (evidence file, annex 25 to the Merits Report, fs. 210 to 212).

<sup>87</sup> In compliance with the resolution of the National Prosecutor's Office No. 1531-2006-MP-FN, it ordered the procedural burden of the Special Prosecutor's Office for Forced Disappearances, then called the Fifth Supraprovincial Criminal Prosecutor's Office among other prosecutors. (*cf.* Decision of the Superior Coordinating Prosecutor of the National Criminal Superior Prosecutor and Supraprovincial Criminal Prosecutors of December 18, 2006 (file of proceedings before the Commission, page 2603).

<sup>88</sup> Resolution Entry No. 522-02 of the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of the Public Ministry of September 11, 2002 (evidence file, annex 26 to the Merits Report, fs. 214 to 216).

<sup>89</sup> Report No. 51-2005-JUS/CNDH-SE/CESAPI of the State of Peru of May 3, 2005, *supra*, (file proceeding before the Commission, f. 2123).

<sup>90</sup> Note No. 276-04-DIRINCRI-PNP/DIVNHOM.DEPINHOM.GOP of April 7, 2004 (evidence file, annex 27 to the Merits Report, fs. 218 to 224). Among the proceedings are: 1) the statement of Federico Díaz Aparicio was received; 2) INPE documentation was collected on the situation of the people who were detained with Teresa Díaz in 1989; 3) information was received from the UNMSM on Teresa Díaz Aparicio; 4) 14 autopsy protocols were received from female NN cadavers, admitted to the Institute of Legal Medicine between the months of August and December 1992, and 5) information was received on the authorities of the Faculty of Social Sciences of the UNMSM, information on the hiring of Teresa Díaz Aparicio and the termination of the same for abandonment of work.

<sup>91</sup> Resolution Entry No. 552-02 of the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of the Public Ministry of January 10, 2005 (evidence file, annex 28 to the Merits Report, fs. 226 to 227).



76. On December 20, 2005, Federico Díaz Aparicio gave a statement to the Fifth Supraprovincial Prosecutor's Office in which he stated that "the only time [his] sister was absent from the university was when she was detained for about a week in 1989," and that she felt watched by the National Police after her release. He added that it was not carried out the complaint at the time of the events for fear of reprisals from the police against his family<sup>92</sup>.

77. On January 4, 2007, the Second Supraprovincial Criminal Prosecutor's Office ordered an extension of the investigations<sup>93</sup>. On October 25, 2007, it ordered to collect different documentation and statements<sup>94</sup>.

78. On February 13, 2009, the Second Supraprovincial Criminal Prosecutor's Office ruled that there was no merit to file a criminal complaint against those who are responsible for the alleged commission of the crime of forced disappearance to the detriment of Teresa Díaz Aparicio and ordered the provisional file of the proceedings. In addition, he arranged to inform the Police Division of the Public Ministry so that it could continue with the investigations. Said Prosecutor concluded that:

Teresa Díaz Aparicio has been missing since July 1992 [...] disappearance that became forced, while there are indications that DIRCOTE personnel participated in such an act, due to the fact that the victim was detained in March 1989, in which by means of Report No. 888-D3-SDIRCOTE, DIRCOTE [her] designated her as a member of the support apparatus of the Communist Party of Peru – Shining Path, in charge of to provide accommodation, food, medical assistance and other requirements of the subversive-terrorist group; which was distorted by the investigation itself on that date, so much so that the Forty-first Provincial Prosecutor of Lima ordered her release, and despite not finding any pending criminal proceedings or criminal investigations for the crime of Terrorism,

that they have been a practice of acting by the police according to the report of the [CVR]<sup>95</sup>.

#### *B.2.4.3. New investigations initiated before the Ordinary Court*

79. On August 8, 2012, the Second Supra-provincial Criminal Prosecutor's Office requested information from the National Criminal Chamber and the Special Criminal Chamber for information that could be relevant or new elements to reorient the investigation into the forced disappearance of Teresa Díaz Aparicio. Proceedings were also requested to receive investigative statements<sup>96</sup>.

#### *B.2.4.4. Proceedings carried out from 2016 before the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves*

80. On July 27, 2016, the Coordination of the National Superior Criminal Prosecutor's Office and the Supraprovincial Criminal Prosecutor's Office of the Public Ministry ordered to reiterate to the corresponding prosecutors the request for information on possible investigations and/or proceedings for the crime against

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<sup>92</sup> Investigation statement of Federico Díaz Aparicio rendered before the Fifth Supraprovincial Prosecutor's Office on December 20, 2005 (evidence file, annex 17 to the Merits Report, fs. 187 and 188).

<sup>93</sup> Order of the Second Supraprovincial Criminal Prosecutor of January 4, 2007, Complaint No. 11-2007 (file of proceedings before the Commission, page 2604).

<sup>94</sup> Resolution of the Second Supraprovincial Criminal Prosecutor of October 25, 2007, Complaint No. 11-2007 (file of proceedings before the Commission, page 2605).

<sup>95</sup> Resolution of the Second Supraprovincial Criminal Prosecutor of February 13, 2009 (evidence file, annex 30 to the Merits Report, fs. 232-242).

<sup>96</sup> Resolution of the Second Supraprovincial Criminal Prosecutor of August 8, 2012 (evidence file, annex 31 to the Merits Report, fs. 244 and 245).

humanity in the form of forced disappearance<sup>97</sup>.

81. As in the other cases, on October 10, 2016, the Coordination of the Superior National Criminal Prosecutor's Office and Supraprovincial Criminal Prosecutors of the Public Ministry ordered the opening of an investigation for the crime against humanity in the form of forced disappearance for the crimes committed against Mrs. Teresa Díaz Aparicio<sup>98</sup>, among others, since the existence of an investigation for such crime had been determined, with respect to her.

82. According to the Resolution of April 3, 2017 regarding the complaint related to Report No. 5/16 Forced Disappearances in Peru of the Inter-American Commission of April 13, 2016, regarding the investigation of Teresa Díaz Aparicio, it indicated that "she would have disappeared on August 19, 1992 [...], [the] prosecutor's office has investigation No. 11.2007 conducted against those found responsible for the crime against Humanity, in the form of forced disappearance, to the detriment of Teresa Díaz Aparicio, the same as by resolution of [...] February 18, 2014, the Provisional File was established, which is still pending processing; In this sense, this investigation is in progress so that the corresponding process can continue."<sup>99</sup>.

### **B.3. Cory Clodolia Tenicela Tello**

#### *B.3.1 Personal and family circumstances of Cory Clodolia Tenicela Tello*

83. Cory Clodolia Tenicela Tello, was 32 years old when she disappeared. His mother is Amadea Felipa Tello de Tenicela and his sister Norma Juana Tenicela Tello and his brother Washington Tenicela Tello and his niece Yorcka Jara Tenicela. He was a student at the Faculty of Chemical Engineering at the National University of Central Peru and sold beauty products.<sup>100</sup>.

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<sup>97</sup> Letter from the Chief Prosecutor Coordinator of the Supraprovincial Criminal Prosecutor's Office, in order to forward the copy of the resolution of July 27, 2016 issued by the office, referring to Letter No. 643-2016- JUS/CDJE-PPES (file of proceedings before the Commission, fs. 765 to 767).

<sup>98</sup> *cf.* Resolution of the Coordination of the Superior National Criminal Prosecutor and Supraprovincial Criminal Prosecutors of the Public Ministry, *supra*.

<sup>99</sup> *cf.* Resolution of April 3, 2017, *supra*. In addition, in the statement of Marcelita del Rosario Gutiérrez Vallejos, Head Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutor's Office of Lima rendered by means of an affidavit before the Court, stated that the Second Prosecutor's Office is in charge of the preliminary investigation for the crime of Forced Disappearance to the detriment of Wilfredo Terrones Silva and Teresa Díaz Aparicio. Regarding the case of the disappearance of Teresa Díaz Aparicio (N. 506012802-2007-11-0), he recounted the various procedures carried out. Thus he indicated that the Special Prosecutor for Forced Disappearances learned of the case on September 11, 2002 and began the preliminary investigation for the crime of forced disappearance to the detriment of Teresa Díaz Aparicio. Then, on January 4, 2007, the Second Supraprovincial Criminal Prosecutor's Office of Lima was informed and there are still no conclusions about the fate and whereabouts of his remains. Her brother, Federico Díaz Aparicio, was the one who encouraged the initiation of the investigation, and in a statement he gave, he stated that the aggrieved woman had disappeared around August 1992 and that he considered that the disappearance could have been the responsibility of members of the Directorate against Terrorism who detained her three years earlier and who, according to what her sister had told her, were monitoring her. On February 18, 2014, the provisional filing of the proceedings was ordered without prejudice to having promoted it from time to time in order to obtain evidence that contributes to the clarification of the facts. On July 31, 2017, a resolution was issued through which a series of proceedings were scheduled, such as the extension of the statement of an LRR witness. The Universidad Nacional Mayor de San Marcos was required to submit the attendance lists of the aggrieved party, having informed that it does not have this documentation, the Minutes of February 2, 2018 have been formulated, where the documents related to the ranks of the teacher Teresa Díaz Aparicio, her attendances for the years 1991-1992 and any power of attorney that she has granted to collect her salaries, are pending collection, as well as well as other documents related to the person who cashed the checks that were collected by witness LRR. such as the expansion of the statement of an LRR witness. The Universidad Nacional Mayor de San Marcos was required to submit the attendance lists of the aggrieved party, having informed that it does not have this documentation, the Minutes of February 2, 2018 have been formulated, where the documents related to the ranks of the teacher Teresa Díaz Aparicio, her attendances for the years 1991-1992 and any power of attorney that she has granted to collect her salaries, are pending collection, as well as well as other documents related to the person who cashed the checks that were collected by witness LRR. such as the expansion of the statement of an LRR witness. The Universidad Nacional Mayor de San Marcos was required to submit the attendance lists of the aggrieved party, having informed that it does not have this documentation, the Minutes of February 2, 2018 have been formulated, where the documents related to the ranks of the teacher Teresa Díaz Aparicio, her attendances for the years 1991-1992 and any power of attorney that she has granted to collect her salaries, are pending collection, as well as well as other documents related to the person who cashed the checks that were collected by witness LRR. *cf.* Statement of Marcelita del Rosario Gutiérrez Vallejos through *affidavit* on March 7, 2018, *supra*.

<sup>100</sup> Petition by Norma Juana Tenicela Tello of January 10, 2003, before the Commission, received on June 10, 2003 (evidence file, annex 59 to the Merits Report, fs. 547 to 551).

### B.3.2. *Disappearance of Cory Clodolia Tenicela Tello*

84. On October 2, 1992<sup>101</sup> Cory Clodolia Tenicela Tello left her home to make some collections in the center of Huancayo and since then her whereabouts have been unknown.

85. The name of Cory Clodolia Tenicela Tello was registered ex officio by the State in the Single Registry of Victims for being included in the Final Report of the Truth and Reconciliation Commission 1980-2000<sup>102</sup> and is registered in the List of Dead and Disappeared Persons Reported to the Truth and Reconciliation Commission 1980-2000, as a disappearance, which was also documented by COMISEDH and the Ombudsman's Office<sup>103</sup>.

### B.3.3. *Complaints and judicial proceedings regarding the disappearance of Cory Clodolia Tenicela Tello*

86. Regarding the alleged disappearance of Cory Clodolia Tenicela Tello, a first investigation was initiated based on the complaint filed in 1992, and which was later joined in 2003 to the file related to the criminal proceedings of 32 other people. allegedly missing (*infrapara*. 88). Said criminal proceeding is pending judicial resolution. Subsequently, on October 10, 2016, the opening of a second investigation was ordered (*supra* footnote 65), but it was not opened due to the existence of the aforementioned investigation.

87. Regarding the first investigation, on October 14, 1992, his mother filed a complaint with the Junín Provincial Prosecutor for his disappearance.<sup>104</sup> and on October 26, 1992, he filed a writ of habeas corpus before the Criminal Court on duty in Huancayo for the detention of his daughter by law enforcement in Huancayo-Junín and take her to the Criminal Investigation Department for not carrying her documents<sup>105</sup>. She also denounced that on the 22nd of that month her home had been searched and that "the lieutenant of the technical police [t]he gave her to understand that [her] daughter is involved in a common crime and is being detained by the technical police of [t]he city," for which reason she requested her immediate release.<sup>106</sup> On November 6, 1992, the then Brigadier General of the 31st Infantry Division of the General Command, requested information from the Chief of Police

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<sup>101</sup> *cf.* Opinion No. 96-2013-1° FSPN-MP-FN of the First National Criminal Superior Prosecutor, File 123-2010 of September 3, 2013 (evidence file to the Merits Report, annex 66, fs. 590 to 623). However, it should be noted that in the file document No. 216-92-DDHH-MP of the Public Ministry, it is established that the date of disappearance was October 1, 1992, and the record of Case No. 15150154 forwarded by the Ombudsman's Office establishes that the last time Mrs. Tenicela Tello was seen was on September 29, 1993, formalization of the criminal complaint by the Junín Provincial Prosecutor's Office (evidence file, annexes 55 and 56 to the answer, fs. 5111 to 5115). In addition, according to the CVR Cory Clodolia Tenicela Tello was detained by members of the Peruvian army on September 29, 1993, based on two unidentified testimonies. In addition, according to the Truth Commission, Cory Clodolia Tenicela Tello was detained by members of the Peruvian army on September 29, 1992, based on unidentified testimonies. *cf.* Truth and Reconciliation Commission, Final Report, 2003, *Cases from the department of Junín reported to the CVR*, p. 69, available at: <http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/JUNIN.pdf>

<sup>102</sup> State communication. Note No. 7-5-M/274 of June 18, 2012. Report No. 111-2012-JUS/PPES (evidence file, annex 64 to the Merits Report, fs. 572 to 579).

<sup>103</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 407.

<sup>104</sup> Complaint filed by Amadea Tello Barrera on October 14, 1992 before the Provincial Prosecutor of Junín (evidence file, annex 60 to the Merits Report, fs. 553 and 554).

<sup>105</sup> Habeas corpus petition filed by Amadea Tello Barrera on October 26, 1992 before the Huancayo Criminal Court (evidence file, annex 61 to the Merits Report, f. 556).

<sup>106</sup> Habeas corpus petition filed by Amadea Tello Barrera on October 26, 1992 before the Huancayo Criminal Court (evidence file, annex 61 to the Merits Report, f. 556).

Nacional de Huancayo on the possible arrest of Cory Clodolia Tenicela Tello<sup>107</sup>. On March 24, 1993<sup>108</sup>, April 20, 1993<sup>109</sup> and May 6, 1993<sup>110</sup>, the Colonel of the National Police, HGF, reported that Cory Clodolia Tenicela Tello was not detained by police personnel from the jurisdiction of the VIII-RPNP-Huancayo, which was communicated to the Special Provincial Prosecutor's Office for the Huanúco-Junín Ombudsman and Rights.

88. On July 22, 2003, the Fourth Provincial Criminal Prosecutor of Huancayo expanded the investigations it had been conducting in another criminal proceeding to include the case of Cory Clodolia Tenicela Tello and 32 other people.<sup>111</sup> After a series of proceedings and investigations, in September 2013 the First Superior Criminal Prosecutor charged DGC, Commander of the Army's 31st Division from January 1991 to December 1992, and BRE, Head of the Civic Action Base of the National University of Central Peru from February 1992 to February 1993, as mediate perpetrators of the illegal acts.<sup>112</sup> The National Superior Prosecutor's Office formalized the criminal complaint against both people and the First Criminal Court of Junín declared the process complex both due to the plurality of agents and aggrieved parties, as well as the number of proceedings to be carried out. On several occasions the deadlines for the investigation were extended. On July 25, 2014, the First Supranational Criminal Prosecutor's Office formalized an expanded criminal complaint against the retired LDP Colonel<sup>113</sup> as mediate author of the crime against personal liberty in the modality of aggravated kidnapping to the detriment of Mrs. Cory Clodolia Tenicela Tello<sup>114</sup>. On September 8, 2014, the First National Criminal Court declared ex officio the termination of the case against the retired Colonels MDCh and LDP<sup>115</sup> in order to simplify the process.

89. On October 20, 2014, the Third National Criminal Court, under file No. 255-2014-0, issued an indictment and opened criminal proceedings against LDP for the crime against personal liberty in the form of aggravated kidnapping, to the detriment of Cory Clodolia Tenicela Tello, and issued an order to appear with restrictions against the aforementioned Colonel<sup>116</sup>. On April 30, 2015 through Opinion 50-2015-1-FSPN-MP-PN, the First National Criminal Superior Prosecutor's Office requested the National Criminal Chamber to extend the investigation for a period of sixty days in order to carry out some procedures, among

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<sup>107</sup> Official letter No. 420 31 DI/K-6/DDHH/01.30.13 from the 31st Infantry Division of the General Command (evidence file, annex 62 to the Merits Report, fs. 557 to 558).

<sup>108</sup> Report No. 036-VIII-RPNP-ENR-ORPDH of the Peruvian National Police (evidence file, annex 54 to the answer, fs. 5107 to 5110).

<sup>109</sup> Report No. 75-93-DGPNP/MMG-DIPAHDH of the Peruvian National Police (evidence file, annex 53 to the answer, fs. 5103 to 5106).

<sup>110</sup> Report No. 92-93-DGPNP/EMG-DIPANDH of the Peruvian National Police (evidence file, annex 52 to the answer, fs. 5099 to 5102).

<sup>111</sup> Report No. 240-2010-JUS/PPES of the Supranational Specialized Public Prosecutor of August 10, 2010 (evidence file, annex 63 to the Merits Report, fs. 560 to 571). According to what the State informed the Commission, on March 5, 2010, the Prosecutor's Office filed a criminal complaint against the alleged perpetrators of the crime of aggravated kidnapping. Based on this, the First Criminal Court initiated criminal investigation against several people. On May 28, 2010, the First Criminal Court issued Resolution No. 8 through which a series of proceedings are scheduled and through Resolution No. 9 of the same date, the First Criminal Court of Huancayo declares the process COMPLEX for the matter, the amount of evidence to be acted or collected, due to the concurrence of facts, by multiple defendants or aggrieved parties, among others.

<sup>112</sup> Opinion No. 96-2013-1° FSPN-MP-FN of the First National Superior Criminal Prosecutor of September 3, 2013, *supra*.

<sup>113</sup> The Court notes that in relation to other of the 32 people, the former Colonel MDCh is also accused in the framework of the same file No. 123-2010-0-5001-JR-PE-01. Opinion 24-2014-1FPS-MP/FN of the First Supranational Criminal Prosecutor of July 25, 2014, file No. 123-2010 (evidence file, annex 26 to the answer, fs. 4815 to 4870).

<sup>114</sup> Opinion No. 24-2014-1FPS-MP/FN of the First Supranational Criminal Prosecutor of July 25, 2014, *supra*.

<sup>115</sup> Resolution of the First National Criminal Court, file 123-2010 of September 8, 2014 (evidence file, annex 28 to the answer, fs. 4889 to 4894).

<sup>116</sup> Indictment of the Third National Criminal Court of October 20, 2014, file No. 255-2014-0 (evidence file, annex 29 to the answer, fs. 4895 to 4914).

to receive the testimony of Norma Juana Tenicela Tello, sister of Cory Clodolia, and Amadea Tello, mother of Cory Clodolia Tenicela Tello<sup>117</sup>. On June 26, 2015 through Opinion 16-2015-1-FPS-MP-FN, the First Supranational Criminal Prosecutor's Office formalized an expanded complaint against DGCandBRE for the crime against personal liberty in the form of aggravated kidnapping and crime against humanity in the form of forced disappearance to the detriment of Cory Clodolia Tenicela Tello<sup>118</sup>.

90. On July 3, 2015, the First National Criminal Court of Lima, in the framework of file No. 123-2010-0, decided to expand the indictment and open the process against Messrs. DGCandBRE<sup>119</sup>.

91. On April 21, 2016, by means of Opinion No. 37-2016-1-FSPN-MP-FN, the First National Criminal Superior Prosecutor's Office requested the National Criminal Chamber to extend the period of investigation in the criminal process remitted in File No. 255-2014-0, as well as that the Provincial Prosecutor and the Judge of the case extend the legal imputation, in order to understand LDP as the author of the crime against humanity in the form of forced disappearance to the detriment of Cory Clodolia Tenicela Tello and other 32 people. Finally, the Superior Prosecutor's Office requested to proceed with the accumulation of Files No. 123-2010-0 and No. 255-2014-0<sup>120</sup>. On the same date, through Opinion No. 38-2016-1-FSPN-MP-FN, the First Superior National Criminal Prosecutor asked the National Criminal Chamber to extend the period of investigation in the criminal proceedings reported in file No. 123-2010-0 in order to carry out proceedings, among which was the receipt of the testimonial statement of Norma Juana Tenicela Tello and Amadea Tello, as well as to request the accumulation of files No. 123-2010-0 and No. 255-2014-0<sup>121</sup>.

92. On July 4, 2016 through Opinion No. 03-2016-1-FPS, the First Supraprovincial Criminal Prosecutor's Office formalized an expanded criminal complaint against LDP as the mediate author of the crime against humanity in the form of forced disappearance to the detriment of Cory Clodolia Tenicela Tello and other 32 victims<sup>122</sup>. On November 14, 2017, the First National Criminal Superior Prosecutor's Office reported that the process is under study for the respective ruling.<sup>123</sup>

93. On the other hand, on October 10, 2016 the Coordination of the Superior National Criminal Prosecutor's Office and prosecutors Supranational Penalties of the Public Ministry ordered the opening of an investigation for the crime against humanity of forced disappearance to the detriment of Cory Clodolia Tenicela Tello<sup>124</sup>, however, because a first investigation was already open (*suprapara*. 86), the second was not opened in accordance with the Resolution of the Second Supraprovincial Criminal Prosecutor of April 3, 2017<sup>125</sup>.

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<sup>117</sup> Opinion No. 50-2015-1-FSPN-MP-PN of the First National Criminal Superior Prosecutor's Office (evidence file, annex 30 to the answer, fs. 4915 to 4940).

<sup>118</sup> Opinion No. 16-2015-1-FPS-MP-FN of the First Supranational Criminal Prosecutor's Office (evidence file, annex 32 to the answer, fs. 4951 to 4968).

<sup>119</sup> Expanded Prosecution Order of the First National Criminal Court of Lima of July 3, 2005, file No. 123-2010-0 (evidence file, annex 33 to the answer, fs. 4969 to 4988).

<sup>120</sup> Opinion No. 37-2016-1-FSPN-MP-FN of the First National Criminal Superior Prosecutor's Office (evidence file, annex 36 to the answer, fs. 5010 to 5019).

<sup>121</sup> Opinion No. 38-2016-1-FSPN-MP-FN of the First National Criminal Superior Prosecutor of April 21, 2016 (evidence file, annex 37 to the answer, fs. 5020 to 5026).

<sup>122</sup> Opinion No. 03-2016-1-FPS of the First Supraprovincial Criminal Prosecutor's Office (evidence file, annex 39 to the answer, fs. 5030 to 5044).

<sup>123</sup> *cf.* Note No. 120-2017-1 FSPN-MP-FN from the First National Criminal Superior Prosecutor of November 14, 2017 (evidence file, annex 8 to the final arguments of the State, f. 5372).

<sup>124</sup> Resolution of the Coordination of the Superior National Criminal Prosecutor and Supranational Criminal Prosecutors of the Public Ministry, *supra*.

<sup>125</sup> *cf.* Resolution of April 3, 2017, *supra*.

## **B.4. Nestor Rojas Medina**

### *B.4.1. Personal and family circumstances of Néstor Rojas Medina*

94. Néstor Rojas Medina was born on July 30, 1970, the son of Marcelina Medina Negrón and Leopoldo Rojas Manuyama.<sup>126</sup> He was a student of radio locution who worked as an intern at Radiodifusión RBC in Lima. As indicated by the representatives, he was raised by his mother and by Abelardo Collantes Quiroz, his mother's partner.<sup>127</sup> Abelardo Collantes and Marcelina Medina Negrón had a daughter, Tania Collantes Medina.<sup>128</sup>

### *B.4.2. Disappearance of Nestor Rojas Medina*

95. Nestor Rojas Medina disappeared in January 1991<sup>129</sup>, when he moved to Tocache to collect certain money that was owed to his family for the sale of some assets<sup>130</sup>. It was the last time his family heard from him.

96. The name Néstor Rojas Medina is registered in the List of Dead and Disappeared Persons Reported to the Truth and Reconciliation Commission 1980-2000, and appears as allegedly disappeared by State agents. It is noted that only one testimony was received reporting his disappearance<sup>131</sup>.

### *B.4.3. Statement before the Truth and Reconciliation Commission*

97. On May 8, 2002, Marcelina Medina Negrón gave a statement before the Truth and Reconciliation Commission, in which she confirmed her statements regarding the arrest of Néstor Rojas Medina on January 26, 1991, and indicated that Commander Santos captured him, and that he was detained at the Tocache Police Station for 8 days, and then transferred to the Tocache military base.<sup>132</sup>

### *B.4.4. Judicial proceedings regarding the disappearance of Néstor Rojas Medina*

#### *B.4.4.1. Complaints filed regarding the disappearance of Néstor Rojas Medina*

98. According to the information available in the file, various complaints were filed regarding the disappearance of Néstor Rojas Medina. The first was presented by Mrs. CSL, President of the Association of Retail Merchants of the Market of

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<sup>126</sup> *cf.* RENIEC, Electoral Registry of Néstor Rojas Medina (file of proceedings before the Commission, page 1883), and Ombudsman's Office, Certificate of Absence due to Forced Disappearance No. 0192 issued on September 6, 2006 (evidence file, annex 53 to the ESAP, f. 4403).

<sup>127</sup> *cf.* Communication from the petitioners of September 23, 2011 (evidence file, annex 51 to the Merits Report, fs. 428 to 494).

<sup>128</sup> *cf.* Statement rendered by Tania Collantes Medina through *affidavit* before the Court on March 9, 2018 (merits file, f. 841).

<sup>129</sup> Regarding the date of his disappearance, there are two possible dates that emerge from the complaints: According to Marcelina Medina Negrón, she disappeared on January 26, 1991, and according to CSL, on January 31, 1991. (*infra* para. 98).

<sup>130</sup> *cf.* Criminal complaint for crimes of kidnapping and forced disappearance filed by Marcelina Medina Negrón before the Prosecutor of the Special Prosecutor's Office for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves on August 20, 2003 (file of proceedings before the Commission, page 1482), and Investigation statement made by Marcelina Medina Negrón on August 17 January 2005 before the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves (file of proceedings before the Commission, fs. 1435 to 1438).

<sup>131</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 365.

<sup>132</sup> *cf.* Statement by Marcelina Medina Negrón rendered before the Truth and Reconciliation Commission on 8 of May 2002 (file of proceedings before the Commission, fs. 1859 to 1864).

Abastos No. 1, on February 5, 1991, before the Tocache Prosecutor's Office, who indicated that "according to versions of people who were passing through that sector," on January 31 of the same year, Néstor Rojas Medina was detained by members of the PNP, along with Mr. MC, while "they were walking through [J]irón Comercio," in the province of Tocache<sup>133</sup>. According to the statement of Mrs. CSL, "[w]hen various associates went to the local police station and the [P]eruvian Army Base, with the purpose [of] inquiring about the situation and whereabouts of the detainees" they were denied that they were detained<sup>134</sup>. The second was presented March 8, 1991 by Mrs. Marcelina Medina Negrón before the National Prosecutor's Office<sup>135</sup>, in which she indicated that her son "was detained by members of the Peruvian National Police in the middle of a 'batida'", that he was taken "to the local police station", that "the PNP said that it would release Néstor [Rojas Medina] after the routine procedure" and that they were later told "that he was transferred to the Tocache military base, but in that place they have denied that he had ever been detained." The third was presented on August 20, 2003 before the Prosecutor of the Special Prosecutor for Forced Disappearances, by Marcelina Medina Negrón<sup>136</sup>, in which she indicated that the disappearance occurred "on January 26, 1991" and pointed out that "Commander 'Tito', Head of the Tocache General Police Command" and any other person responsible for the disappearance of her son were responsible.<sup>137</sup> It also indicated that the presumed arrest had as precedent "an incursion of the Shining Path on November 9, 1990 in the hamlet of Juan Santos Atahualpa," in which they set fire to his mother's house and murdered the principal of the school, Segundo Grandez, cousin of Néstor Rojas." As a result of said event, the family of Néstor Rojas Medina moved to Lima<sup>138</sup>.

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<sup>133</sup> *cf.* CSL's complaint before the Tocache Prosecutor's Office on February 5, 1991 (evidence file, annex 52 to the Merits Report, f. 496). Mrs. CSL expressly refused to ratify her complaint, because "her cohabitant of the associate (sic) Néstor Rojas Medina, whose name I do not know, [has] told her not to do anything about the matter since he was going on a trip to the city of Lima and the fate of his cohabitant no longer mattered to her." Inquiry statement of Mrs. CSL rendered before the Tocache Mixed Provincial Prosecutor's Office on March 19, 1991 (file of proceedings before the Commission, page 1910).

<sup>134</sup> According to the statement of Marcelina Medina Negrón in 2003, assisted by Senator JHP, she indicated that he communicated with the Tocache National Police, who "had been placed at the disposal of the Military Command." Criminal complaint for crimes of kidnapping and forced disappearance filed by Marcelina Medina Negrón before the Prosecutor of the Special Prosecutor for Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves on August 20, 2003 (file of proceedings before the Commission, page 1482).

<sup>135</sup> Complaint filed by Marcelina Medina Negrón on March 8, 1991, before the Office of the Prosecutor of the Nation (evidence file, case file before the Commission, fs. 1932 and 1933).

<sup>136</sup> *cf.* Criminal complaint for crimes of kidnapping and forced disappearance filed by Marcelina Medina Negrón, *supra*; Letter from Marcelina Medina Negrón of February 14, 1991 addressed to Senator JHP of the Republic (file of proceedings before the Commission, fs. 1770 and 1771); Investigation statement of Marcelina Medina Negrón rendered before the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves on January 17, 2005 (file of proceedings before the Commission, fs. 1435 to 1438). In this investigative statement, Marcelina Medina Negrón indicated that the aforementioned events occurred on December 8, 1990, unlike in her other statements.

<sup>137</sup> In this regard, Senator JHP, who became aware of the disappearance of Néstor Rojas Medina, submitted a request to the Senate in which he requested "that it order an investigation into the detention and subsequent disappearance" of Néstor Rojas Medina "by members of the General Police in the city of Tocache" on January 26, 1991 "being placed at the disposal of the military headquarters of the aforementioned city." In said communication addressed to the Senate, he indicated that he communicated "by telephone with the Head of the General Police Command of Tocache who identified himself as Commander 'Tito', confirming [he] that the detainee was placed at the disposal of the Armed Forces." Communication from Senator JHP addressed to the President of the Senate of Peru on March 12, 1991 (file of proceedings before the Commission, page 1924). *cf.* Official Letter No. 3156-IN-SG from the Ministry of the Interior addressed to the Public Ministry of November 14, 1991 (file of proceedings before the Commission, page 1522), and Official Letter No. 135-76-CPG-ANTIDROGAS addressed to the Mixed Provincial Prosecutor of Tocache on March 20, 1991 (file of proceedings before the Commission, page 1915). Subsequently, Marcelina Medina Negrón indicated that the person responsible for the arrest was "Comandante Santos." *cf.* Statement of Marcelina Medina Negrón rendered before the Court at the public hearing held on March 13 and 14, 2018.

<sup>138</sup> The Sub-prefect of the province of Tocache certified that the Province of Tocache "[was] in a state of emergency, due to the presence of Subversives" and that Marcelina Medina Negrón "suffered an attempt on her life,

#### *B.4.4.2. Proceedings carried out within the framework of the investigations*

##### *B.4.4.2.1. Proceedings carried out from 1991 to 2000 before the Provincial Prosecutor of tocache*

99. Regarding the complaints filed in 1991 with the Tocache Prosecutor's Office (*supra* para. 98), On February 6, 1991, it was decided to initiate the investigation<sup>139</sup>, and information was requested from the Political-Military Headquarters of Tocache<sup>140</sup> and to the Tocache National Police Station of Peru<sup>141</sup> about whether they had detained Néstor Rojas Medina. On February 8, 1991, the Tocache Police Station responded by indicating that the police personnel did not intervene in said actions.<sup>142</sup> On March 8, 1991, the Tocache Prosecutor's Office sent a communication to Senator JHP in which he stated that he stated some procedures that he had carried out up to that date, and that the investigations would continue.<sup>143</sup> On March 15, 1991, information was requested from the Tocache Command regarding the disappearance of Néstor Rojas Medina.<sup>144</sup>

100. On March 19, 1991, CSL appeared before the Prosecutor's Office to render an investigative statement, in which it did not confirm the content of its complaint (*supra* footnote 133).

101. On March 20, 1991, the Chief of the Anti-drug Police sent an official letter to the Prosecutor's Office regarding the query made by the latter regarding the alleged conversation that Commander "Tito" had with Senator JHP (*supra* para. 99). On that same date, a report was issued in which Commander "Tito" would have acknowledged having received a call from Senator JHP, in which he would have indicated that Néstor Rojas Medina was not detained at the police station.<sup>145</sup> On April 1 and 5, 1991, Division General B of the Ministry of Defense informed Senator JHP and the Prosecutor that he had issued official letters stating that Néstor Rojas Medina had not been detained at Counter-subversive Base No. 26 in Tocache and that the PNP had no knowledge of the case.<sup>146</sup> On April 9, 1991, the Senate, at the request of Senator JHP, asked the Prosecutor's Office to investigate the disappearance of Néstor Rojas Medina<sup>147</sup>. Senator JHP affirmed that on February 14, 1991, he indicated to the Prosecutor's Office that he had communicated with Commander "Tito" (SDC) and that he confirmed that Néstor Rojas Medina had been detained and subsequently placed at the disposal of the Armed Forces.

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managing to escape with his life, for which he decided to establish [his residence] in the city of Lima, in defense of his physical integrity and that of his children." Certificate of the Sub-prefect of the province of Tocache of December 4, 1990 (file of proceedings before the Commission, page 1441).

<sup>139</sup> *cf.* Communication from the Tocache Provincial Prosecutor of February 6, 1991 (file of proceedings before the Commission, page 1906).

<sup>140</sup> *cf.* Note No. 24-91-DFPT-MP from the Tocache Provincial Prosecutor of February 6, 1991 (file of procedure before the Commission, f. 1908).

<sup>141</sup> *cf.* Note No. 25-91-DFPT-MP from the Tocache Provincial Prosecutor of February 6, 1991 (file of procedure before the Commission, f. 1909).

<sup>142</sup> *cf.* Official letter No. 158-76-SFG-AD-CT from the PNP Police Station addressed to the Provincial Prosecutor of Tocache dated December 8, February 1991 (file of proceedings before the Commission, page 1907).

<sup>143</sup> Note No. 78-91-FRT-MP from the Provincial Prosecutor's Office addressed to Senator JHP on March 8, 1991 (file of proceedings before the Commission, page 1621).

<sup>144</sup> Official letter No. 77-91-PPRT-MP of March 15, 1991 from the Provincial Prosecutor to Command 76 of Tocache (file of proceedings before the Commission, page 1913).

<sup>145</sup> *cf.* Illegible document No. of the National Police of Peru of March 20, 1991 (file of proceedings before the Commission, f. 1916).

<sup>146</sup> *cf.* Official letter No. 1736-SGMD-D- of the General of Aviation of B of the Ministry of Defense to Senator JHP April 1, 1991 (File of proceedings before the Commission, page 1628), and Official letter No. 1837 SMGD-D of the General of Aviation of B of the Ministry of Defense to the Supreme Deputy Prosecutor in Criminal Matters in Charge of the Special Prosecutor's Office in the Ombudsman's Office April 5, 1991 (File of proceedings before the Commission, page 1490).

<sup>147</sup> *cf.* Official letter SRFC - 118/91 from the Senate to the Special Prosecutor for the Ombudsman and Human Rights April 9, 1991 (file of proceedings before the Commission, f. 1509).



Armed<sup>148</sup>.

102. On April 13, 1991, Marcelina Medina Negrón met with the Tocache Commissioner, who showed her the book of detainees, which did not contain the name of Néstor Rojas Medina, and she was shown all the rooms of the Police Station.<sup>149</sup> On April 15, 1991, the Ministry of Defense reported that Néstor Rojas Medina had not been handed over to the Countersubversive Base of the Huallaga Front or to the Tocache PNP.<sup>150</sup> On April 17, 1991, Marcelina Medina Negrón also appeared at BCS No. 26 in Tocache and it was recorded that her son was not there either.<sup>151</sup> On May 9, 1991, Mrs. Medina Negrón filed a complaint with then President Alberto Fujimori about the disappearance of her son.<sup>152</sup> On May 22, 1991, Marcelina Medina Negrón expanded on her complaint and stated that "her son was placed at the disposal of the Army while being detained for 15 days in the Tocache Barracks" and that "a Second Sergeant of the Army told her that indeed her son was detained together with two other people and that they have been transferred to Lima, that they would be in the Army barracks in Chorrillos."<sup>153</sup> On September 22, 1991, Marcelina Medina Negrón gave her first investigative statement.<sup>154</sup> On that same date, the National Penitentiary Institute informed the Prosecutor that Néstor Rojas Medina was not admitted to any penitentiary center.<sup>155</sup> On August 5, 1992, the PNP informed the Prosecutor's Office that there was no record of the detention of Néstor Rojas Medina.<sup>156</sup>

103. On January 18, 2000, he forwarded "the defendants" to the PNP in order for them to continue the investigations into the incident.<sup>157</sup> On April 5, 2000, the Tocache National Police presented a police note in which they concluded that it had not been possible to determine that Néstor Rojas Medina had been intervened by law enforcement officers, and sent a statement taken to HUC, who indicated that he was aware of the arrest of Néstor Rojas Medina "based on his wife's version."<sup>158</sup> and that he was reportedly taken "from his home at night by 08 individuals who [had] covered their faces," and that it is unknown who detained him. On April 25, 2000, the Prosecutor's Office referred the investigation to the Police so that they could continue with the efforts to locate Néstor Rojas Medina.<sup>159</sup> On June 12, 2000, the Tocache National Police reiterated that it had not been able to determine that Mr. Rojas

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<sup>148</sup> Request from Senator JHP to the Presidency of the Human Rights Chamber of March 12, 1991 (file of proceedings before the Commission, page 1515). *cf.* Note No. 3156-IN-SG from the Ministry of the Interior addressed to the Public Prosecutor's Office on November 14, 1991 (file of proceedings before the Commission, page 1522), and Note No. 135-76-CPG-ANTIDROGAS addressed to the Mixed Provincial Prosecutor's Office of Tocache on March 20, 1991, *supra*.

<sup>149</sup> Record of Visual Inspection signed by Marcelina Medina Negrón before the Tocache Police Station on April 13, 1991 (file of proceedings before the Commission, page 1626).

<sup>150</sup> *cf.* Official letter No. 074-8-2 of April 15, 1991 issued by the Ministry of Defense to the Supreme Deputy Prosecutor for Criminal Matters (file of proceedings before the Commission, f. 1536).

<sup>151</sup> Evidence signed by Marcelina Medina Negrón on April 17, 1991 (file of proceedings before the Commission, page 1627).

<sup>152</sup> Document presented by Marcelina Medina Negrón to the Office of the President on March 16, 1991 (file of proceedings before the Commission, page 1632).

<sup>153</sup> Extension of the complaint filed by Marcelina Medina Negrón on May 22, 1991 (file of proceedings before the Commission, page 1535).

<sup>154</sup> *cf.* Investigation statement to Marcelina Medina Negrón on September 22, 1991 before the Mixed Provincial Prosecutor's Office (file of proceedings before the Commission, page 1940).

<sup>155</sup> *cf.* Note No. 074-92-INPE/CR from the National Penitentiary Institute addressed to the Supreme Deputy Criminal Prosecutor in charge of the Special Prosecutor's Office in the Office of the Ombudsman and Human Rights of September 22, 1992 (file of proceedings before the Commission, page 1494).

<sup>156</sup> *cf.* Report No. 191-DINT-DIRANDRO of the PNP of August 5, 1992 (file of proceedings before the Commission, page 1498).

<sup>157</sup> *cf.* Resolution No. 009-00-MP-FPM-TOCACHE of the Tocache Mixed Provincial Prosecutor's Office of January 18, 2000 (file of proceedings before the Commission, page 1954).

<sup>158</sup> *cf.* Report No. 015-2000-JPPNP-CFCID of the Tocache PNP Police Station on April 5, 2000 (file of proceedings before the Commission, page 1955).

<sup>159</sup> *cf.* Resolution No. 068-00-MP-FPN-TOCACHE of the Tocache Mixed Provincial Prosecutor of April 25, 2000 (file of proceedings before the Commission, page 1961).

Medina would have been intervened by law enforcement officers, and on the contrary, he presumes that he was “intervened by DD.TT. if one takes into account that this opportunity, subversive crime in this province was in full swing”<sup>160</sup>. On July 11, 2000, the Prosecutor's Office issued a resolution in which it indicated that it was not certain who detained the victim, for which reason it ordered the provisional file of the case and that the Tocache Police Station continue with the investigation.<sup>161</sup>.

*B.4.4.2.2. Complaints filed in 1991 before the National Prosecutor's Office and the Prosecutor's Office Special in the Ombudsman and Human Rights*

104. Regarding the complaints filed in 1991 with the National Prosecutor's Office (*suprapara*. 98), The file before this Court does not reveal any information in relation to this proceeding.

*B.4.4.2.3. Proceedings carried out from 2004 to date before the Prosecutor's Office Specialized for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves*

105. Regarding the complaint filed on August 20, 2003 (*suprapara*. 98), it was indicated that it was opened for processing on September 23, 2004, that official letters were sent to various authorities<sup>162</sup>, from which responses were received from which it can be deduced that: 1) the criminal investigation initiated in 1991 existed; 2) no trial had been initiated before the National Chamber for said facts<sup>163</sup>; 3) Néstor Rojas Medina did not record information on terrorism in the police department<sup>164</sup>; 4) Néstor Rojas Medina had no judicial or arrest record<sup>165</sup>, and that 5) Néstor Rojas Medina had registered migratory movements to Japan and the United States in 1995<sup>166</sup>. Subsequently, on December 13, 2004, the Specialized Prosecutor's Office proceeded to order new proceedings, from which information was received that: 1) there were five police officers who served in 1991 at the Tocache Police Command<sup>167</sup>, and 2) on January 17, 2005, Marcelina Medina Negrón gave a new investigative statement<sup>168</sup>. On March 21, 2005, the Prosecutor's Office

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<sup>160</sup> *cf.* Report No. 47-2000-JPPNP-CT/SID of the Tocache PNP Police Station of June 12, 2000 (file of proceedings before the Commission, page 1962).

<sup>161</sup> *cf.* Resolution No. 363-00-MP-FPM-TOCACHE of the Tocache Mixed Provincial Prosecutor's Office of July 11, 2000 (file of proceedings before the Commission, page 1965).

<sup>162</sup> *cf.* Note from the Special Prosecutor for Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves of September 23, 2004 (file of proceedings before the Commission, page 1969).

<sup>163</sup> *cf.* Job. N° 237-2004-SCSJNN-SNT of the National Criminal Chamber addressed to the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of October 11, 2004 (File of proceedings before the Commission, f. 1997).

<sup>164</sup> *cf.* Official letter No. 3241-04-DIRCOTE/SG.2 from the PNP Anti-Terrorism Directorate addressed to the Prosecutor's Office Specialized for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of October 6, 2004 (file of proceedings before the Commission, page 2000).

<sup>165</sup> *cf.* Official letter No. 17372-2004-INPE/12 from the National Penitentiary Institute of December 28, 2004 (file of proceedings before the Commission, page 1424).

<sup>166</sup> *cf.* Official letter (the first number is not identified)-2004-IN/1601/SG of the General Directorate of Migration and Naturalization of October 12, 2004 (file of proceedings before the Commission, f. 2002).

<sup>167</sup> Commander "Tito" was not listed on it. *cf.* Note No. 183-2005-DIRREHUM-PNP/SEC from the Human Resources Department of the PNP addressed to the Special Prosecutor for Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves (Date illegible) (file of proceedings before the Commission, page 1432).

<sup>168</sup> In said statement, he indicated that his son had been detained “by the Police in Tocache at Av. Aviación in front of Inka Kola, they said that it was Commander Santos who was in charge of the Tocache Police Station, after eight days of detention the police asked me for the sum of US\$4,000 American Dollars to release him but since he did not have it, they handed it over to the soldiers at the Tocache Military Base, my son had US\$2,000 in his backpack American dollars, the police took that money from him and placed a sketch and a bomb possibly to show that he was a terrorist, [Mrs. [ML] told me this when he was detained at the police station.” It also indicated that Faustina Collantes Quiroz “went at that time to the Tocache Military Base to ask about [her] son, spoke with the Commander named 'Iván' who told her that he was not at said Military Base, that they had sent him to

required four new investigative statements<sup>169</sup>, of which two do not appear in the file that they were carried out. The other two corresponded to statements by the JTCh police officers, who at the date of the events were taking a course in Lima.<sup>170</sup>, and that of AOF, who arrived at the Tocache Police Station after the date of the events<sup>171</sup>.

106. On June 8, 2005, the Prosecutor's Office (now called the Fifth Supraprovincial Criminal Prosecutor's Office) refrained from hearing the investigation because it considered itself incompetent to carry it out.<sup>172</sup>, and forwarded it on September 14, 2005 to the Senior Prosecutor of the Judicial District of Huánuco, who was to refer it to the corresponding Prosecutor's Office<sup>173</sup>. On October 5, 2006, the Provincial Criminal Prosecutor of Moyobamba addressed the Tocache Mixed Prosecutor's Office to forward the previous actions of the Senior Prosecutor of the Judicial District of Huánuco<sup>174</sup>.

107. On February 20, 2011, it was decided to transfer the investigation to the First Provincial Corporate Criminal Prosecutor of Moyobamba (hereinafter also "First Prosecutor").<sup>175</sup>. the 28th of March In 2011, the First Prosecutor's Office ordered to adapt the investigation of the case of Néstor Rojas Medina to the new Code of Criminal Procedure, to initiate a preliminary investigation at the prosecutor's office against those who are responsible for the "crime against humanity in the form of forced disappearance" against him "with a maximum period of 120 days for the best clarification of the facts", the extension of the statement of several people, and send various official letters to different state institutions<sup>176</sup>.

108. On January 18, 2013, the First Prosecutor declared "that it is not appropriate to formalize or continue with the preliminary investigation" for the crime of forced disappearance "committed by members of the National Police, in a state of identification, to the detriment of Néstor Rojas Medina." It also provided that "within three days they may challenge such decision before the

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DIRCOTE from Lima and that if he was at fault he would stay and if not they would return him". In that same statement, when asked if she was aware of the circumstances of her son's detention, she indicated that she was unaware of them since she was in Lima that day. Similarly, when asked if she knew who participated in the detention of her son, she indicated that she does not know who participated in the detention of her son. She also indicated, when asked if she knew any witnesses to the arrest, she indicated that "Mr. [F] I do not know their last names, but I have a letter that he sent me, I am going to bring it, 'Meche' or [ML], my sister-in-law Faustina Collantes Quiroz, Mrs. [SCS], [JA], my husband Abelardo Collantes Quiroz and many people from Tocache." Investigative statement of Marcelina Medina Negrón rendered before the Special Prosecutor for Forced Disappearances,

<sup>169</sup> Investigation statements to Ofelia Antezana Torre, JTCh, VRN and AOF, police personnel who allegedly worked in the Tocache PNP on the date of the events. *cf.* Note from the Special Prosecutor for Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves of March 21, 2005 (file of proceedings before the Commission, page 1457).

<sup>170</sup> *cf.* Investigation statement by JTCh before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of April 28, 2005 (file of proceedings before the Commission, page 1479).

<sup>171</sup> *cf.* Investigation statement of AOF before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of April 29, 2005 (file of proceedings before the Commission, page 1465).

<sup>172</sup> *cf.* Note from the Fifth Supraprovincial Criminal Prosecutor of June 8, 2005 (file of proceedings before the Commission, page 1475).

<sup>173</sup> *cf.* Note No. 2-005-FSC-MP-FN from the Superior Prosecutor Coordinator of the Superior National Criminal Prosecutor's Office and Supraprovincial Criminal Prosecutors of September 14, 2005 (file of proceedings before the Commission, page 1479).

<sup>174</sup> *cf.* Note No. 333-2006-MP-2da.FPP-Moyobamba from the Provincial Criminal Prosecutor of Moyobamba addressed to the Mixed Prosecutor of Tocache on October 5, 2006 (file of proceedings before the Commission, page 1476).

<sup>175</sup> Provision No. 001-2011-MP-DJSM-1° FPPL-T of the First Provincial Criminal Prosecutor's Office Tocache Settlement of February 20, 2011 (file of proceedings before the Commission, f. 1556).

<sup>176</sup> Provision No. 1 of the First Provincial Corporate Criminal Prosecutor of Moyobamba of March 28, 2011 (evidence file, annex 56 of the Merits Report, f. 523), and Report No. 165-2011-JUS-PPES of the Supranational Specialized Public Prosecutor of April 25, 2011 (evidence file, annex 55 of the Merits Report, f. 514 ).

same prosecutor, in order [that] he submit the proceeding to the corresponding Superior Prosecutor's Office."<sup>177</sup>. In said decision, the Prosecutor's Office considered that "although it is true of the perception of the defendants that make up the criminal case to date, it can be concluded that the criminal act is accredited with the statement of the complainant [CSL] and other means of proof", it is also true that "of the investigations carried out both at the police and prosecutor levels, it has not been possible to individualize and identify the alleged perpetrators of the criminal act" and that "only statements were obtained, among them the statement of Marcelina Medina Negrón, and that in matters of an investigation at the prosecutor's level, and in compliance with the new procedural rules, this statement does not give merit to prosecute an investigation"<sup>178</sup>.

109. On August 26, 2013, the First Prosecutor's Office declared the Prosecutor's decision of January 18, 2013 "consented," since "the period for the parties [to] file an Appeal" had elapsed and that there was "no appeal against the aforementioned Provision."<sup>179</sup>.

*B.4.4.2.4. Proceedings carried out from 2016 before the Special Prosecutor for Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves*

110. As in the other cases, the Order of October 10, 2016 ordered the opening of the investigation for forced disappearance, to the detriment of Néstor Rojas Medina, as well as the other alleged victims in this case (*suprapara*. 63).

111. On April 25, 2017, the First Prosecutor's Office referred the investigation to the National Police, in order for it to carry out a complementary investigation, and specifically required expanding the statement of HUC and CSL, issuing official letters to the Ministry of Defense, Ministry of the Interior, Directorate against Terrorism of the Peruvian Police, Executive Office of Penitentiary Registry, National Registry of Convictions, General Directorate of Migrations and Naturalization, Office of Electoral Processes, and require statements from police officers who worked in Tocache during the time of the events<sup>180</sup>.

112. The 7On July 1, 2017, the Police issued a report in which it announced that the requests for information were made to the Anti-Terrorism Directorate of the Peruvian Police, the National Registry of Sentences, the General Directorate of Migrations and Naturalization, the Office of Electoral Processes, and the Executive Office of the Penitentiary Registry, of which only the last two would have responded, indicating that neither the entry to any penitentiary establishment nor the exercise of universal suffrage by Néstor Rojas Medina were registered.<sup>181</sup>. The Police conclude in the report stating that "it has not been determined

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<sup>177</sup> Provision No. 03-2012-1FPPL of the Tocache First Criminal Provincial Prosecutor for Adequacy and Liquidation of January 18, 2013 (evidence file, annex 45 to the answer, f. 5076).

<sup>178</sup> Provision No. 03-2012-1FPPL of the First Provincial Criminal Prosecutor for Adequacy and Liquidation of Tocache of January 18, 2013, *supra*.

<sup>179</sup> Order No. 04-2013-MP-DFSM-1° FPPC-T of the First Provincial Criminal Prosecutor of August 26, 2013 (evidence file, annex 46 to the answer, f. 5083).

<sup>180</sup> *cf.* Order No. 01-2017-MP-DJSM-1 FPP-AL-T of the First Provincial Corporate Criminal Prosecutor of Tocache of April 25, 2017 (evidence file, annex 11 of the final arguments of the State, f. 5380), and *cf.* Statement of Marcelita del Rosario Gutiérrez Vallejos through *affidavit* on March 7, 2018, *supra*.

<sup>181</sup> In addition, it was indicated that the demonstrations to CSL and HUC were taken. In this regard, CSL would have indicated that "when she was holding the position of president of the Mercado de Abastos No 01- Tocache, some people who stated that they were relatives of Néstor ROJAS MEDINA, as well as his wife, his parents of the disappeared person and others appeared at her office" and stated the account indicated in her first complaint (*suprapara*. 98). In addition, he indicated that "after filing the respective complaint [cia] his wife or cohabitant who does not know his name and surname" indicated that "his partner had traveled to the city of Lima, accompanied by another woman and did not care about his whereabouts." He finally stated that "the person who fled [or] knew him as Walter or Shapiruco and did not

conclusively that the person of Néstor Rojas Medina supposedly disappeared on 31JAN91 or was intervened by the Forces of [O]rder, among them the National Police of Peru or the Armed Forces."<sup>182</sup>.

113. On March 15, 2018, the Tocache Provincial Criminal Prosecutor's Office requested information from the National Police about the investigation<sup>183</sup>. There is no additional information on the present investigation in the file before the Court.

*B.4.4.3. Certificate of absence due to forced disappearance issued by the Ombudsman's Office*

114. On August 22, 2005, Marcelina Medina Negrón asked the Ombudsman for a certificate of absence due to forced disappearance in favor of Néstor Rojas Medina within the framework of Law No. 28413.<sup>184</sup>.

115. On September 6, 2006, the Ombudsman's Office issued a verification report in which it "recommend[ed] issuing the respective certificate of absence due to Forced Disappearance." In said verification report, it was determined that "there are elements that allow us to reasonably presume that Néstor Rojas Medina is absent due to forced disappearance as a consequence of the violence that occurred between 1980 and 2000, since January 26, 1991."<sup>185</sup> Likewise, he determined that "a group of policemen, who were carrying out a raid, detained Néstor Rojas Medina when he was passing through the vicinity of Aviación avenue, district and province of Tocache, department of San Martín. The police officers took the victim to the Tocache Police Station, and after a few days she was transferred to the Tocache Military Base. Since that date, his whereabouts have been unknown."<sup>186</sup>.

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like Nestor ROJAS MEDINA". Regarding the statement taken from HUC, the latter indicated that "he never knew the person with the name of Néstor Rojas Medina, because of his physical characteristics he knew him as Walter or Shapiruco" and that "he has never observed that police personnel or personnel from the Peruvian Army had intervened in Jr. Comercio" and that CSL later indicated that "the alleged disappeared person was taken from his home at night in 1991." *cf.* National Police of Peru. Report No. 283-17-VMR PNP-HSMU/REGPOL-SAM/DIVPOS-MC-J/SEINCRIT of July 7, 2018 (evidence file, annex 12 of the final arguments of the State, fs. 5383 to 5386).

<sup>182</sup> *cf.* National Police of Peru. Report No. 283-17-VMR PNP-HSMU/REGPOL-SAM/DIVPOS-MC-J/SEINCRIT of July 7, 2018, *supra*.

<sup>183</sup> *cf.* Note No. 300-2018-MP-DJSM-FPPT-2DDT from the Tocache Provincial Criminal Prosecutor's Office addressed to the Chief of the PNP-Tocache Police Station on March 15, 2018 (evidence file, annex 13 of the State's final arguments, f. 5388).

<sup>184</sup> Article 3, subparagraph a, of the aforementioned law, provides that absence due to forced disappearance occurs "when the person had disappeared or was disappeared in circumstances of having suffered arrest, detention or transfer against their will or any other form of deprivation of liberty". *cf.* Ombudsman, Verification Report No. 6790-20006-OD/Lima of the Ombudsman of September 6, 2006 (evidence file, annex 54 to the Merits Report, fs. 502 to 508).

<sup>185</sup> *cf.* Verification Report No. 6790-20006-OD/Lima of the Ombudsman's Office on September 6, 2006, *supra*.

<sup>186</sup> To reach this conclusion, in the aforementioned Verification Report No. 6790-20006-OD/Lima, it is indicated that the following procedures were carried out: 1) it was verified that "[t]he forced disappearance of Néstor Rojas Medina is registered in the Consolidated List of the database of the Truth and Reconciliation Commission" included in the publication 'The missing Peruvians: Preliminary list of persons disappeared due to violence (1980- 2000)', with registration No. 6790"; 2) the documentary heritage transferred from the Public Prosecutor's Office to the Ombudsman's Office was analyzed, which included: a) the complaint filed by Marcelina Medina Negrón on March 8, 1991 (*suprapara*. 98); b) An Official Letter from the Secretariat of the Senate to the Office of the Prosecutor of the Nation in which it indicated that Senator JHP communicated with Commander "Tito" (*suprapara*. 101), and c) a letter of May 21, 1991 from the General Commander of the Huallaga Front to the Special Prosecutor of the Office of the Ombudsman and Human Rights of Lima "informing that Néstor Rojas Medina was not handed over to any Countersubversive Base of the Huallaga Front"; 3) the testimony of Marcela Medina Negrón on May 8, 2002 rendered before the Truth and Reconciliation Commission was assessed, and 4) she carried out the following verification procedures: a) administrative verifications of the National Registry of Identification and Civil Status (RENIEC), Office of Electoral Processes, General Directorate of Migrations and Naturalization, National Penitentiary Institute, and Division of Inquiries of the National Police, with

116. On the same September 6, 2006, the Ombudsman's Office issued a certificate of Absence due to Forced Disappearance, which indicates that "[sa]id person disappeared at the age of 20, on Aviación Avenue, district and province of Tocache, department of SanMartin, on January 26, 1991"<sup>187</sup>.

## **B.5. Santiago Antezana Cueto**

### *B.5.1. Personal and family circumstances of Santiago Antezana Cueto*

117. Santiago Antezana Cueto<sup>188</sup> was born on May 20, 1946, and was a native of Manyac, District of Anta, Acobamba Province, Huancavelica Department<sup>189</sup>. He worked as an independent salesman, he lived in the city of Lima, Jr. Pachacútec MZ. "U", Lot 02, Carmen Alto, Comas and lived with his cohabitant Rosa Carcausto Paco<sup>190</sup>.

### *B.5.2. Disappearance of Santiago Antezana Cueto*

118. On May 7, 1984, Santiago Antezana Cueto traveled to Manyac to attend his father's wake. That same day, when he realized that his uncle Máximo Antezana Espeza was being detained by community members of the Manyac Annex Self-Defense Committee, he came out in defense of his uncle and was therefore arrested and handed over to members of the Peruvian Army, who took him and his uncle to the Military Headquarters of the Acobamba Detachment.<sup>191</sup> On May 15, 1984, Máximo Antezana Espeza, his uncle, was released after being tortured, leaving Santiago Antezana Cueto still alive at the military base.<sup>192</sup> Since that date, all information about Mr. Antezana Cueto has been denied to his next of kin<sup>193</sup>. Máximo Antezana Espeza stated that he and his nephew had been subjected to torture while they were detained at the Military Headquarters. Rosa Carcausto Paco denounced, according to what Mr. Antezana Espeza informed her, that Santiago Antezana Cueto was also subjected to various tortures<sup>194</sup>.

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in order to obtain information on any information available from said institutions related to Néstor Rojas Medina, and b) direct verification, namely, interviews with Marcelina Medina Negrón, on September 19, 2005, who ratified her testimony before the CVR, that Néstor "was taken to the Tocache Police Station where he remained for 8 days and was later transferred to the Tocache Military Base"; to Faustina Collantes Quiroz, on June 20, 2006, "who found out about the victim's detention in February 1991, through [MAP]," and indicated that "[she] went to the Tocache Military Base where she met with an (unidentified) military officer, who told her that the victim was detained at the military base, but was later released"; to Luzmilla Collantes Quiroz, on June 20, 2006, and who indicated that Néstor "was detained on January 26, 1991, by members of the National Police, learning what happened a month later from [MAP], who told her that some soldiers from the Tocache Military Base were looking for her to tell her that her nephew was detained" and that "[c]on the witness went to the military base, they told her that the victim had only been detained for five days, and their whereabouts were unknown." The documents from which each of the aforementioned proceedings is derived were not provided, but only the verification report that assesses them. who told her that some soldiers from the Tocache Military Base were looking for her to tell her that her nephew was detained" and that "[w]hen the witness went to the military base, they told her that the victim had only been detained for five days, and they did not know his whereabouts." The documents from which each of the aforementioned proceedings is derived were not provided, but only the verification report that assesses them. who told her that some soldiers from the Tocache Military Base were looking for her to tell her that her nephew was detained" and that "[w]hen the witness went to the military base, they told her that the victim had only been detained for five days, and they did not know his whereabouts." The documents from which each of the aforementioned proceedings is derived were not provided, but only the verification report that assesses them.

<sup>187</sup> *cf.* Ombudsman's Office, Certificate of Absence due to Forced Disappearance No. 0192 issued on September 6, 2006 (evidence file, annex 53 to the ESAP, f. 4403).

<sup>188</sup> *cf.* Military notebook of Santiago Antezana Cueto (evidence file, annex 21 to the ESAP, page 4125). *cf.* Complaint filed by the  
<sup>189</sup> Human Rights Commission, COMISEDH, before the Provincial Prosecutor's Office Acobamba, Huancavelica, on November 25, 2004 (evidence file, annex 42 to the Merits Report, page 300).

<sup>190</sup> *cf.* Complaint filed by Ermilio Antezana Cueto and Rosa Carcausto Paco on March 15, 1985 before the Office of the Prosecutor of the Nation (evidence file, annex 36 to the Merits Report, f. 280).

<sup>191</sup> *cf.* Ratification of Rosa Carcausto Paco's complaint of June 20, 2001, received on June 25, 2001 by the National Prosecutor's Office (evidence file, annex 41 to the Merits Report, fs. 295 to 297), and Judgment of the National Criminal Chamber in file No. 149-2009-0 of December 12, 2013 (evidence file, annex 15 to the response, pages 4691 to 4766).

<sup>192</sup> *cf.* Record of release of Máximo Antezana Espeza, the political-military chief of Acobamba on May 15, 1984 (evidence file, annex 24 to ESAP, f. 4212).

<sup>193</sup> *cf.* Ratification of the complaint filed by Rosa Carcausto Paco, *supra*.

<sup>194</sup> *cf.* Communication from the petitioners of January 19, 2005. Request for guarantees presented by the Mr. Máximo Antezana Espeza to the Director of the Human Rights Office of the Public Ministry on

119. The name of Santiago Antezana Cueto is registered in the List of Dead and Disappeared Persons Reported to the Truth and Reconciliation Commission 1980-2000<sup>195</sup>.

### *B.5.3. Proceedings in the jurisdiction regarding the disappearance of Santiago Antezana Cueto*

#### *B.5.3.1. Complaints made by relatives of Santiago Antezana Cueto between 1985 and 1992*

120. On March 15, 1985, Ermilio Antezana Cueto and Rosa Carcausto Paco, brother and cohabitant of Santiago Antezana Cueto, respectively, filed a complaint with the National Prosecutor's Office, requesting an investigation of the facts to protect the personal integrity of him and the other detainees, and to identify and punish those responsible.<sup>196</sup> In addition, on September 13, 1984, Ofelia Antezana Torre, Julia Antezana Torre, Justina Antezana Espeza, Honorata Cueto Trucios, and Ermilio Antezana Cueto filed a complaint with the National Prosecutor for the events that occurred to Mr. Antezana Cueto so that the corresponding investigation could be undertaken and the complaint formalized in due course before the Investigating Judge.<sup>197</sup>

121. On January 16, 1985, Ermilio Antezana Cueto and Ofelia Antezana Torre, cousin of Santiago Antezana Cueto, together with other people, they requested information on the complaint they had filed in September 1984<sup>198</sup>. On May 31, 1985, Ofelia Antezana Torre requested information from the National Prosecutor regarding the complaints filed for the arrest and subsequent disappearance of Santiago Antezana Cueto, Emiliano Antezana Espeza, and two other persons.<sup>199</sup>

122. On May 27, 1992, Rosa Carcausto Paco went to the Special Prosecutor's Office of the Ombudsman and Human Rights to inquire about her complaint. She indicated that when she went to inquire about the missing person a month after his arrest, they denied his detention at the Military Detachment, but that he was detained before and that they should not insist because he had been transferred to Ayacucho.<sup>200</sup> On August 14, 1992, the Acobamba Mixed Provincial Prosecutor informed the Huancavelica Special Prosecutor for Crime Prevention, Ombudsman and Human Rights that "there is no complaint in this regard[,] as well as that both persons have not been intervened by personnel from this Headquarters[,] since there are no files from that time because they were set on fire during the attack

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September 1986 (evidence file, annex 48 to the Merits Report, f. 417 to 418); Ratification of the complaint filed by Rosa Carcausto Paco, *supra*, and Statement of Rosa Carcausto Paco rendered before the Acobamba Mixed Provincial Prosecutor's Office on February 17, 2005 (evidence file, annex 50 to the Merits Report, fs. 424 426).

<sup>195</sup> Truth and Reconciliation Commission, Final Report, 2003, *supra*, p. 19.

<sup>196</sup> *cf.* Complaint filed by Ermilio Antezana Cueto and Rosa Carcausto Paco, *supra*. On March 4, 1991 Rosa Carcausto Paco reiterated the complaint before the National Prosecutor. *cf.* Reiteration of the complaint filed on March 4, 1991 by Rosa Carcausto Paco before the National Prosecutor's Office (evidence file, annex 33 to the ESAP, f. 4246), and Statement of Rosa Carcausto Paco, *supra*.

<sup>197</sup> *cf.* Complaint by Ofelia Antezana Torre, Julia Antezana Torre, Justina Antezana Espeza, Honorata Cueto Trucios and Ermilio Antezana Cueto on September 13, 1984 before the National Prosecutor (evidence file, annex 28 to ESAP, fs. 4225 to 4230).

<sup>198</sup> *cf.* Communication from Félix Castro Montes, Ofelia Antezana Torre, Justina Antezana Espesa and Ermilio Antezana Cueto presented on January 16, 1985 before the Prosecutor of the Nation (evidence file, annex 29 to ESAP, fs. 4232 to 4233).

<sup>199</sup> *cf.* Communication from Ofelia Antezana Torre to the National Prosecutor of May 31, 1985 (evidence file, annex 38 to the Merits Report, fs. 284 and 285).

<sup>200</sup> *cf.* Expansion of the complaint by Rosa Carcausto Paco before the Special Prosecutor for the Ombudsman and Human Rights of the Public Ministry on May 27, 1992 (evidence file, annex 39 to the Merits Report, f. 287).

subver[sive] produced in 1989”<sup>201</sup>. On August 17, 1992, the Huancavelica Special Prosecutor for Crime Prevention, Ombudsman and Human Rights ordered the Acobamba Provincial Prosecutor to initiate a new investigation.<sup>202</sup>

#### *B.5.3.2. Internal criminal proceedings after 2001*

123. On June 25, 2001, Rosa Carcausto Paco ratified her complaint for the arrest and disappearance of Santiago Antezana Cueto before the National Prosecutor's Office.<sup>203</sup> On November 25, 2004, he filed a criminal complaint with the Acobamba Mixed Provincial Prosecutor's Office against the Army Captain nicknamed “Scorpion” belonging to the Acobamba Military Headquarters, and other military personnel and others responsible for the disappearance of Santiago Antezana Cueto.<sup>204</sup>

124. On February 3, 2005, it issued a resolution in order to carry out procedures to identify those responsible for what happened, and on July 31, 2009, the Huancavelica Provincial Criminal Prosecutor formalized a criminal complaint against José Antonio Esquivel Mora, Army Captain of the Acobamba Barracks, as the perpetrator of the crime against humanity in the form of forced disappearance to the detriment of Santiago Antezana Cueto.<sup>205</sup> On April 28, 2010, the corresponding criminal proceedings were opened<sup>206</sup>, and on April 8, 2011, the Third Supraprovincial Criminal Court of Lima issued an impediment to Captain José Antonio Esquivel Mora from leaving the country.<sup>207</sup>

125. He26December 2012, the Third Superior National Criminal Prosecutor issued Opinion No. 116-2012-3FSPN, whereby it considered that there was merit to proceed to an oral trial for the commission of the crime against humanity in the form of Forced Disappearance to the detriment of Mr. Antezana Cueto<sup>208</sup>, against Jose Antonio Esquivel Mora.

126. On December 12, 2013, the National Criminal Chamber issued a sentence against José Antonio Esquivel Mora, sentencing him to 15 years of imprisonment as the mediate perpetrator in organized power apparatuses of the forced disappearance of Santiago Antezana Cueto, in his capacity as Chief of the Acobamba Military Base, to four years of disqualification and payment of civil compensation of one hundred thousand nuevos soles in favor of the legal heirs of the victim and fifty thousand nuevos soles in favor of Rosa paco<sup>209</sup>. However, despite having been present at all the oral trial hearings, José Antonio Esquivel Mora did not attend the reading of the sentence, finding himself a fugitive from the

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<sup>201</sup> Note from the Mixed Provincial Prosecutor of Acobamba addressed to the Provincial Prosecutor of the Special Prosecutor for Crime Prevention, Ombudsman and Human Rights of Huancavelica on August 14, 1992 (evidence file, annex 40 to the Merits Report, fs. 289 and 290).

<sup>202</sup> *cf.* Note from the Special Prosecutor for Crime Prevention, Ombudsman and Human Rights addressed to the Provincial Prosecutor of Acobamba on August 17, 1992 (evidence file, annex 40 to the Merits Report, fs. 291 to 293).

<sup>203</sup> *cf.* Ratification of the complaint filed by Rosa Carcausto Paco, *supra*.

<sup>204</sup> *cf.* Complaint filed by Rosa Carcausto Paco before the Acobamba Mixed Provincial Prosecutor's Office on November 2004 (evidence file, annex 42 to the Merits Report, fs. 299 to 314).

<sup>205</sup> *cf.* Prosecutor Resolution No. 65-2005 of the Mixed Provincial Prosecutor of Acobamba of February 3, 2005 (evidence file, annex 37 to the ESAP, fs. 4271 and 4272), and Criminal complaint filed by the Provincial Supraprovincial Criminal Prosecutor of Huancavelica before the Criminal Court of Huancavelica on July 31, 2009 (file of evidence, annex 38 to the ESAP, pages 4274 to 4291).

<sup>206</sup> *cf.* Indictment of the Third Supraprovincial Criminal Court of Lima on April 28, 2010 (evidence file, annex 44 to the Merits Report, fs. 334 to 369).

<sup>207</sup> *cf.* Personal coercive measure of the National Criminal Chamber of the Third Supraprovincial Court of Lima on April 8, 2011 (evidence file, annex 45 to the Merits Report, fs. 371 to 382).

<sup>208</sup> *cf.* Opinion No. 116 – 2012 3FSPN of the Third National Criminal Superior Prosecutor of December 26, 2012 (evidence file, annex 22 to the ESAP, fs. 4128 to 4133).

<sup>209</sup> *cf.* Judgment of the National Criminal Chamber in file No. 149-2009-0 of December 12, 2013, *supra*.



justice ever since. Given this situation, on December 13, 2013, the Chamber issued an arrest warrant against him.<sup>210</sup> On March 26, 2015, the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic rejected an appeal for annulment filed against the aforementioned decision of December 2013.<sup>211</sup> On August 6, 2015, the National Criminal Chamber ordered compliance with the judgment and the registration of the sentence in the national registry of inmates and defendants.<sup>212</sup>

127. Through Resolution No. 6 of December 29, 2015, the National Criminal Chamber ordered to renew the national and international arrest and location orders against José Antonio Esquivel Mora<sup>213</sup>. On January 13, 2016, the National Criminal Chamber issued the corresponding official letters, ordering their immediate location and capture, which were directed to the Injunction Division of the Judicial Police, the Lima District Injunction Office and the Executive Directorate of the INTERPOL-Lima National Central Office.<sup>214</sup> On May 2, 2016, said Chamber ordered to renew said orders.<sup>215</sup> and on May 11 and 12, 2016, the corresponding official letters were issued.<sup>216</sup> Through Resolution No. 227 of June 20, 2016, the National Criminal Chamber declared inadmissible a brief by the defense of Mrs. Rosa Carcausto Paco, in which the search of an apartment was requested, where the sentenced man was allegedly located, since according to Law. No. 27379 was not empowered to carry out such a procedure because the status of the case was execution of sentences, and not preliminary investigations, without prejudice to make it known to the Inquiries Division of the Peruvian National Police and the District Inquiries Office of Lima<sup>217</sup>.

## VIII

### BACKGROUND

128. The case relates to the alleged forced disappearances of Wilfredo Terrones Silva (since August 26, 1992), Teresa Díaz Aparicio (since August 19, 1992), Cory Clodolia Tenicela Tello (since October 2, 1992), Néstor Rojas Medina (since January 1991), and Santiago Antezana Cueto (since May 7 of 1984). To date his whereabouts are unknown. The events that occurred to the five alleged victims took place in the context of the systematic and widespread practice of forced disappearance in the framework of the State's fight against terrorism, with special incidence in those years. According to the Commission, the State would also be responsible for the torture suffered by Santiago Antezana Cueto at the Acobamba Military Base. In addition, the Commission argued that since the disappearances that occurred between 1984 and 1992, there have been

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<sup>210</sup> *cf.* Arrest warrant for José Antonio Esquivel Mora issued by the National Criminal Chamber on December 13, 2013 (evidence file, annex 42 to ESAP, f. 4367).

<sup>211</sup> *cf.* Judgment delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on March 26, 2015 (evidence file, annex 16 to the answer, fs. 4768 to 4785).

<sup>212</sup> *cf.* Order of the National Criminal Chamber in file No. 149-2009-0 of August 6, 2015 (evidence file, annex 17 to the answer, f. 4787).

<sup>213</sup> It is worth mentioning that said resolution clarified the computation of the sentence established in the judgment of December 12, 2013, and that the sentence established in said sentence be computed from the date on which José Antonio Esquivel Mora was captured. *cf.* Resolution No. 6 issued by the National Criminal Chamber of December 29, 2015 (evidence file, annex 20 to the answer, fs. 4794 to 4795).

<sup>214</sup> *cf.* Notes from the National Criminal Chamber addressed to the Chief of the Judicial Police Inquiries Division, to the Head of the District Inquiry Office of Lima, and to the Executive Director of the INTERPOL-Lima OCN on January 13, 2016 (evidence file, annex 21 to the answer, fs. 4797 to 4799).

<sup>215</sup> *cf.* Order of the National Criminal Chamber of May 2, 2016 (evidence file, annex 22 to the answer, f. 4802).

<sup>216</sup> *cf.* Notes from the National Criminal Chamber addressed to the Chief of the Judicial Police Inquiries Division, to the Head of the District Inquiry Office of Lima, and to the Executive Director of the INTERPOL-Lima OCN on May 11 and 12, 2016 (evidence file, annex 22 to the answer, fs. 4804 to 4806).

<sup>217</sup> Resolution No. 227 issued by the National Criminal Chamber of June 20, 2016 (evidence file, annex 24, to the answer, fs. 4809 to 4811).

long years in all cases, without the State having concluded the investigations to establish the whereabouts of the alleged victims and to identify, prosecute and, where appropriate, punish those responsible. However, it should be noted that on December 12, 2013, a final judgment was issued in the case of Santiago Antezana Cueto. In addition, it alleged that the State violated the right to personal integrity, to the detriment of the next of kin of the individuals named.

129. To resolve the controversy raised in the first place, the Court will determine if what happened to the five presumed victims constitutes a forced disappearance of persons and, if so, it will rule on the consequent international responsibility of the State. For this, it will refer to the general standards from which it will carry out the analysis of the alleged forced disappearance and, subsequently, it will examine the alleged forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto. Next, the Court will analyze the alleged violations of judicial guarantees and judicial protection in the framework of the investigations or proceedings, as the case may be, initiated as a result of the events that occurred to the five alleged victims, as well as the alleged violations of article 1b) of the CIDFP, to the detriment of said persons and articles 1, 6, and 8 of the CIPST, to the detriment of Santiago Antezana Cueto, as well as the alleged violation of the right to the truth and the alleged breach of the obligations of the duty to adopt provisions of domestic law. Finally, it will refer to the alleged harm to the personal integrity of the next of kin of the alleged victims.

130. It should also be noted that from the analysis of the facts of this case, it can be deduced that Guillermina Frida Landázuri Gómez, Graciela Aparicio Pastor, Federico Díaz Aparicio, Marcelina Medina Negrón, Tania Collantes Medina, Amadea Felipa Tello de Tenicela, Rosa Carcausto Paco, Ermilio Antezana Cueto, and Ofelia Antezana Torre, were the ones who initiated, accompanied, or intervened in the development of the steps to find out what had happened to their next of kin, which is why this Court will analyze whether the State provided them with an effective remedy.

**VIII.1.**  
**FORCED DISAPPEARANCE**  
**(Articles 3<sup>218</sup>, 4<sup>219</sup>, 5<sup>220</sup> and 7<sup>221</sup> of the American Convention on Human Rights, in relation to its article 1.1<sup>222</sup>)**  
**and obligation provided for in article Ia)<sup>223</sup>**  
**of the Inter-American Convention on Forced Disappearance of Persons**

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

131. The **Commission** alleged that Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela Tello disappeared at different times between 1984 and 1992 in the context of the armed conflict in Peru, in which forced disappearance was used systematically as one of the forms of combating terrorism. It added that the study of a possible forced disappearance should not be focused in an "isolated, divided, and fragmented manner only on the detention or possible torture, or the risk of losing one's life," but should also focus on the set of facts that are presented in the case under consideration. He also highlighted that "in all cases, the state authorities either denied the detention of the alleged victims, or refused to provide information on their fate or whereabouts." It concluded that all the elements of the forced disappearance taken together allow us to infer that the five alleged victims were detained by State agents between 1984 and 1992. It considered that there are sufficient elements to classify what happened to said persons as a forced disappearance perpetrated by State agents, which continues to date. It concluded that the State violated and continues to violate Articles 3, 4, 5 and 7 of the American Convention, in

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<sup>218</sup> Article 3 of the Convention establishes the following: "Everyone has the right to have their legal personality recognized."

<sup>219</sup> Article 4.1 of the Convention establishes the following: "1. Every person has the right to have his life respected. This right will be protected by law and, in general, from the moment of conception. No one can be deprived of life arbitrarily".

<sup>220</sup> Articles 5.1 and 5.2 of the Convention establish the following: "1. Every person has the right to have their physical, mental and moral integrity respected. 2. No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment. Every person deprived of liberty shall be treated with the respect due to the inherent dignity of the human being".

<sup>221</sup> Article 7 of the Convention establishes the following: "1. Everyone has the right to personal liberty and security. 2. No one may be deprived of his physical freedom, except for the causes and under the conditions established in advance by the Political Constitutions of the States Parties or by the laws enacted in accordance with them. 3. No one may be subjected to arbitrary arrest or imprisonment. 4. Any person arrested or detained must be informed of the reasons for his arrest and notified, without delay, of the charge or charges against him. 5. Any person arrested or detained must be brought, without delay, before a judge or other official authorized by law to exercise judicial functions and shall have the right to be tried within a reasonable time or to be released, without prejudice to the continuation of the process. His release may be conditional on guarantees that ensure his appearance at trial. 6. Every person deprived of liberty has the right to appeal before a competent judge or court, so that it decides, without delay, on the legality of his arrest or detention and orders his release if the arrest or detention were illegal. In the States Parties whose laws provide that any person who is threatened with being deprived of their liberty has the right to appeal to a competent judge or court so that it decides on the legality of said threat, said remedy cannot be restricted or abolished. Appeals may be filed by themselves or by another person. 7. No one will be arrested for debts. This principle does not limit the mandates of a competent judicial authority issued for breaches of maintenance duties.

<sup>222</sup> Article 1.1 of the Convention establishes the following: "1. The States Parties to this Convention undertake to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction, without any discrimination for reasons of race, color, sex, language, religion, political opinion or of any other nature, national or social origin, economic position, birth or any other social condition."

<sup>223</sup> Article Ia) of the CIDFP establishes: "The States Parties to this Convention undertake to: a) Not practice, allow, or tolerate the forced disappearance of persons, even in a state of emergency, exception, or suspension of individual guarantees."

relation to the obligations established in article 1.1 of the same instrument and article Ia) of the CIDFP, to its detriment.

132. The **representatives** they adhered to the considerations of the Commission.

133. The **State** indicated that it did not violate Articles 3, 4.1, 5.1, 5.2 and 7.1 of the American Convention and the obligations set forth in Articles I and III of the CIDFP, to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, since the forced disappearance has not been proven. Regarding Santiago Antezana Cueto, he considered that it is appropriate to apply the principle of subsidiarity or complementarity, since there is already a definitive judicial ruling that determined the individual criminal responsibility of the accused involved in the process, as well as the civil reparation that corresponded to his relatives. Therefore, the Court should not rule on the merits of the alleged violations. Similarly, regarding the alleged torture perpetrated against Santiago Antezana Cueto,

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

### ***B.1. General considerations on Forced Disappearance***

134. This Court has developed in its jurisprudence the multi-offensive nature of forced disappearance, as well as its permanent or continuous nature, which continues as long as the whereabouts of the disappeared person are not known or their remains are identified with certainty.<sup>224</sup> In this sense, the analysis of a possible forced disappearance must cover the entire set of facts that are presented to the consideration of the Court. Only in this way is the legal analysis of the possible forced disappearance consistent with the complex violation of human rights that it entails,<sup>225</sup> with its permanent nature and with the need to consider the context in which the events occurred, in order to analyze their prolonged effects over time and fully focus on their consequences, taking into account the *corpus juris* both inter-American and international protection<sup>226</sup>.

135. In addition, the Court recalls that the disappearance of a person because his whereabouts are unknown is not the same as a forced disappearance.<sup>227</sup> In turn, in accordance with what has been indicated above, the forced disappearance of persons is a violation of human rights made up of three concurrent elements: a) the deprivation of liberty; b) the direct intervention of state agents or their acquiescence, and c) the refusal to acknowledge the detention or failure to provide information and reveal the fate or whereabouts of the person concerned.<sup>228</sup>

136. The use of circumstantial evidence, indications, and presumptions to support a judgment is legitimate, provided that consistent conclusions can be drawn from them about

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<sup>224</sup> *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Background, above*, paras. 155 to 157, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 65.

<sup>225</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 Munárriz Escobar et al. v. Peru, supra*, para. 65.

<sup>226</sup> *Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 85, and Case of Munárriz Escobar et al. v. Peru, supra*, para. 65.

<sup>227</sup> *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 14, 2014, para. 226, and Case of Munárriz Escobar et al. v. Peru, supra*, para. 63.

<sup>228</sup> *Cf. Case of Gómez Palomino v. Peru, supra*, para. 97, and *Case of Munárriz Escobar et al. v. Peru, supra*, paras. 63 and 80.

the facts<sup>229</sup>. In this regard, this Tribunal has indicated that the plaintiff bears, in principle, the burden of proof of the facts on which its allegation is based; However, it has highlighted that, unlike domestic criminal law, in proceedings on human rights violations, the defense of the State cannot rest on the impossibility of the plaintiff to adduce evidence, when it is the State that has control of the means to clarify events that occurred within its territory.<sup>230</sup> Additionally, circumstantial or presumptive evidence is of special importance when it comes to complaints about forced disappearance, since this form of violation is characterized by seeking the suppression of all elements that allow verifying the detention, whereabouts, and fate of the victims.<sup>231</sup>

137. In addition, the Court considers that, even though there is a context of systematic and generalized practice of forced disappearance, in order to determine the occurrence of a forced disappearance, the existence of other elements is required to corroborate that the person was deprived of their liberty with the participation of State agents or by individuals who acted with the authorization, support, or acquiescence of the State. In this sense, this Court has determined that "the mere verification of the practice of disappearances is not enough, in the absence of any other evidence, even circumstantial or indirect, to demonstrate that a person whose whereabouts are unknown was a victim of it."<sup>232</sup>

138. Lastly, before going on to analyze the merits of the controversy, this 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>233</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>2.3.4</sup> The Court recalls that, unlike a criminal court, in order to establish that there has been a violation of the rights contemplated 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. For this Court, it is necessary to acquire the conviction that actions or omissions have been verified, attributable to the State, that have allowed the perpetration of those violations or that there is an obligation of the State that has not been fulfilled by it. In this sense, for an international court, the criteria for assessing the evidence are different from those used in internal legal systems and it is possible for it to freely evaluate the evidence.<sup>235</sup>

139. Next, the Court will analyze the dispute between the parties and the Commission on whether or not the forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello and Néstor Rojas Medina has been configured. Likewise, it will refer to the State's request that the Court not rule on the forced disappearance of Santiago Antezana Cueto. The examination is carried out taking into account the context

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<sup>229</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *supra*, paras. 130, 131 and 135, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 67.

<sup>230</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *supra*, paras. 130, 131 and 135, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 67.

<sup>231</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *supra*, paras. 130, 131 and 135, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 67.

<sup>232</sup> Cf. *Fairén Garbí and Solís Corrales v. Honduras. Background*. Judgment of March 15, 1989. Series C. No. 6, paras. 157.

<sup>233</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *above*, para. 134, and *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 144.

<sup>2.3.4</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006*. C series no.

140., para. 118, and *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 144. Cf. *Case of*

<sup>235</sup> *Velásquez Rodríguez v. Honduras. Background*, *above*, para. 128.

within which the disappearances of the five alleged victims were circumscribed. In consideration of the foregoing, the Court will proceed to analyze the alleged disappearances in accordance with the three elements that constitute forced disappearance (*suprapara.* 135), in order to determine if they are accredited in each of the cases under analysis.

### ***B.2. Forced disappearance of Wilfredo Terrones Silva***

140. Wilfredo Terrones Silva, lawyer, was last seen on August 26, 1992. On August 28, 1992, his disappearance was reported to the Fifth Provincial Criminal Prosecutor of the National Police (*supraparas.* 55 and 58).

141. The Court notes that at the time of the facts there was an armed conflict in Peru, in which a systematic practice of forced disappearances was used as a way of fighting terrorism. This was carried out, among others, against the Shining Path group and was addressed without distinction to its members, collaborators or sympathizers, among whom, according to the State, were the lawyers who were members of the Association of Democratic Lawyers (*suprapara.* 51). The categorization of those who provided any service to the members of the so-called PCP-SL within the framework of the lawful exercise of their profession as a participant in terrorism, as was the case with doctors<sup>236</sup> and in this case with lawyers, indicates that the context responded to a policy that tended not to keep limits regarding those who were reputed terrorists without any discrimination.

142. In the present case, it has been proven that Wilfredo Terrones Silva was a person identified by the State as linked to the Sendero Luminoso group and had even already been deprived of liberty for the crime of terrorism in the Chiclayo and El Frontón prisons before his disappearance. The State affirmed that Mr. Terrones Silva was charged as Sub-Director of the Base and leader of Sendero Luminoso in the Province of Jaén. In addition, Mr. Terrones Silva was a member of the Association of Democratic Lawyers, a group recognized for its role in providing legal advice and assuming the defense of members of Sendero Luminoso accused of terrorism (*suprapara.* 54). From the foregoing, it can be deduced that the activities of Mr. Terrones Silva are framed within the context of forced disappearances in Peru.

143. This Court notes, in addition to the context, that there are other probative elements related to the situation of Mr. Terrones Silva. At the time of his disappearance, his son was deprived of his liberty in the Castro Castro Prison, and according to what his father stated, she was acting as his lawyer. In this regard, Wilfredo Terrones Landázuri, in his investigative statement rendered on January 26, 2018, before the Second Supraprovincial Criminal Prosecutor's Office, stated that he found out, at the end of August 1992, when he was deprived of his liberty, of the disappearance of his father through a delegate from the Pavilion, who told him that unidentified persons kidnapped Mr. Terrones Silva at the gate of the prison. *supra* footnote 52). This was reiterated in similar terms in his statement at the public hearing before this Court. The Court notes that said statements are consistent with each other and with the pattern of forced disappearances that existed at the time in Peru. All of them show that Mr. Terrones Silva was deprived of his liberty by state agents in the vicinity of the Castro Castro Prison, which is why the Court finds that the

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*Cf. Case of De La Cruz Flores v. Peru, supra, para. 68, and Case of Pollo Rivera et al. v. Peru, supra, para. 213.*

first two constituent elements of enforced disappearance.

144. In addition, among other elements, there is a journalistic note published in the newspaper *Caretas* in which Mr. Clemente Alayo Calderón, former agent of the Colina Group, is interviewed, who referred to the practices of the members of that Group against people identified as suspected terrorists and, one of these, consisted of "depositing the bodies in bags" and later was throwing them "into the sea or some desert place", and that one of the corpses that suffered that fate, was that of "Wilfredo Terrones Silva"<sup>237</sup>. As she has pointed out on multiple occasions<sup>238</sup>, this Court considers that press documents may be appreciated when they include public and notorious facts or statements by State officials, or when they corroborate aspects related to the case. Likewise, Wilfredo Terrones Landázuri also affirmed that a person told him that his father was tortured and murdered, and then threw his remains into the sea.<sup>239</sup>. The Court notes that these are the only elements provided in the file that refer to the possible whereabouts of Wilfredo Terrones Silva. In this sense, the Court notes that despite the fact that the State was aware of the facts since August 1992, more than 26 years have passed since he disappeared, his whereabouts are currently unknown, and an investigation into what happened has not been concluded, as determined in the following chapter (*infra* para. 220). Nor has the State presented any different hypothesis about his whereabouts. However, the State has denied the existence of the forced disappearance of Mr. Terrones Silva based on the fact that he has not had positive results in the procedures carried out to locate his whereabouts, for which reason it considered that it should be presumed that he went into hiding (*supraparas.* 59 and 60).

145. Based on the foregoing, the Court concludes that the disappearance of Mr. Terrones Silva occurred in the context of a counter-subversive State policy that, given the victim's background and activity, placed him in a highly vulnerable situation in the face of the systematic practice of forced disappearance with the intervention of State agents of persons suspected of belonging to or sympathizing with Sendero Luminoso. Added to this are the indications derived from the statements of Wilfredo Terrones Landázuri, that the last news of the presence of Mr. Terrones Silva was in the vicinity of the prison where his son was deprived of liberty, in turn, identified as a member of the terrorist group, that his presence in the place was due to an alleged call that he would have received alerting him to the danger to his son, to which one should add the publication of a journalistic statement by a member of the State security forces in which he mentions that the corpse of the man. Terrones Silva would have been thrown into the sea, denying any

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<sup>237</sup> Interview with Clemente Alayo Calderón, *Diario Caretas* on July 26, 2011. (*cf.* Journalistic note in the *Caretas* magazine of July 26, 2001 (evidence file, annex 2 to the Merits Report, f. 18).

<sup>238</sup> *cf. Case of Velásquez Rodríguez v. Honduras. Background, above*, para. 140; *Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 25, 2017. Series C No. 334, para. 22, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 27.

<sup>239</sup> Wilfredo Terrones Landázuri has recently made two statements, one on January 26, 2018, before the Second Supraprovincial Criminal Prosecutor's Office, in which he stated that when he was incarcerated in the Castro Castro Prison he obtained the testimony of [PUL], "who met the agent [MCT], who belonged to the Colina group, and told him that at the end of August 1992 he had seen [his] father Wilfredo Terrones Silva in a military facility kidnapped and that he witnessed his death after being tortured, since his body was sectioned with an electric saw while he was still alive, and then thrown into the sea." In the other, rendered on March 13, 2018 at the public hearing before this Court, in which, referring to his father, he stated "that agents [of the] Colina group intervened, tortured him, took him to a military installation, and that they section him alive, while he is alive they cut him with a chainsaw, in a military installation, and then his body or the remains are thrown into the sea. And he [knows] this because [he] was told by an inmate, [...] whom [he met] when he arrived at the prison [...], after May, they sent him to another prison very far from Lima, and there he met or met with an agent from the Colina [MC] group, and [he] has also been able to see the statements and that is in a Peruvian magazine that circulates nationally, the magazine *Caretas*." (Evidence file, annex 6 to the final arguments of the State, fs. 5355 to 5358, and Statement made by Wilfredo Terrones Landázuri at the public hearing held on March 13 and 14, 2018 before the Court), they are thrown into the sea. And he [knows] this because [he] was told by an inmate, [...] whom [he met] when he arrived at the prison [...], after May, they just sent him to another prison far from Lima, and there he meets or interviews with an agent of the Colina [MC] group, and [he] has also been able to see the statements and that is in a Peruvian magazine that circulates nationally, the magazine *Caretas*." (Evidence file, annex 6 to the final arguments of the State, fs. 5355 to 5358, and Statement made by Wilfredo Terrones Landázuri at the public hearing held on March 13 and 14, 2018 before the Court), they are thrown into the sea. And he [knows] this because [he] was told by an inmate, [...] whom [he met] when he arrived at the prison [...], after May, they sent him to another prison very far from Lima, and there he met or met with an agent from the Colina [MC] group, and [he] has also been able to see the statements and that is in a Peruvian magazine that circulates nationally, the magazine *Caretas*." (Evidence file, annex 6 to the final arguments of the State, fs. 5355 to 5358, and Statement made by Wilfredo Terrones Landázuri at the public hearing held on March 13 and 14, 2018 before the Court), and [he has] also been able to see the statements and that is in a Peruvian magazine that circulates nationally, *Caretas* magazine." (Evidence file, annex 6 to the final arguments of the State, fs. 5355 to 5358, and Statement made by Wilfredo Terrones Landázuri at the public hearing held on March 13 and 14, 2018 before the Court), and [he has] also been able to see the statements and that is in a Peruvian magazine that circulates nationally, *Caretas* magazine." (Evidence file, annex 6 to the final arguments of the State, fs. 5355 to 5358, and Statement made by Wilfredo Terrones Landázuri at the public hearing held on March 13 and 14, 2018 before the Court).

information from the State about his whereabouts and the state demonstration that presumes he had supposedly gone into hiding, thus reiterating that it clearly considered him a member of the terrorist group, without counting on the objectivity of the almost three decades that have elapsed without any news of Mr. Terrones Silva.

146. Consequently, taking into account the multi-offensive nature of the forced disappearance of persons (*suprapara*. 134), this Court concludes that the State is responsible for the violation of 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 with the provisions of Article Ia) of the Inter-American Convention on Forced Disappearance, to the detriment of Wilfredo Terrones Silva.

### ***B.3. Forced disappearance of Teresa Díaz Aparicio***

147. Teresa Díaz Aparicio was last seen on August 19, 1992. Her disappearance was reported on February 25, 2002 by her brother Federico Díaz Aparicio, when he filed a writ of habeas corpus against the Director of DINCOTE and the Minister of Justice (*supraparas*. 67 and 70). On July 31, 2002, her brother stated before the Truth and Reconciliation Commission that his family had not reported the disappearance of her sister out of fear, since at that time she was still being monitored by DINCOTE (*supra para*. 69).

148. The Court notes that the disappearance of Teresa Díaz Aparicio is part of a context of forced disappearance of persons that included university professors from the Universidad Nacional Mayor de San Marcos who were associated with PCP-SL. In this sense, Mrs. Díaz Aparicio not only fit this profile as a university professor, but had also been the subject of various investigative procedures against her, such as search of her home, arrest, inquiry regarding documents seized at her home (*suprapara*. 66). The arrest occurred on March 27, 1989, and on April 5, 1989, the National Police concluded that "he belonged to the support apparatus of the PCP-SL." In addition, in a statement made by her brother, Federico Díaz Aparicio, stated that after her release in April 1989, she was watched by DINCOTE (*suprapara*. 76).

149. The Court notes that since August 19, 1992, there has been no trace of the whereabouts of Mrs. Díaz Aparicio, and that since February 25, 2002 the State was aware of her disappearance with the presentation of the habeas corpus filed by her brother Federico Díaz Aparicio, without presenting any other hypothesis about her whereabouts. In addition, the Second Supraprovincial Criminal Prosecutor's Office issued an opinion on February 13, 2009, in which it was indicated that Mrs. Díaz Aparicio was the victim of a forced disappearance (*suprapara*. 78), given that he had been a member of the support apparatus of the Communist Party of Peru, and that he had been subjected to a search and detention by state officials in the circumstances described in the previous paragraph.

150. For its part, the Court observes that in the specific case of Teresa Díaz Aparicio, the Criminal Investigation Directorate of the Homicide Department of the National Police estimated that "it is presumable" that she "went into hiding" (*suprapara*. 74). The Court considers that this fact highlights the denial of the detention and his subsequent disappearance by State agents, since the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person constitutes a preponderant element when evaluating the



disappearance<sup>240</sup>. In this sense, said state hypothesis, which was not confirmed in its subsequent investigations, is not consistent with the facts that emerge from this case. Thus, the Court notes that more than 26 years have elapsed without any trace of Teresa Díaz Aparicio.

151. In this way, the Court emphasizes that the disappearance of Teresa Díaz Aparicio is subsumed in a context of systematic and generalized practice of forced disappearance in the framework of the fight against terrorism by the State. In the specific case, taking into account the profile of a university professor and her relationship with SL, as well as the raid and detention to which she was subjected in 1989, the more than 26 years that have elapsed without her having reappeared, and the evidence previously analyzed, the Court deems that there are sufficient elements to corroborate that Mrs. Díaz Aparicio was detained by State agents. In addition to this, the Court notes that the State has not provided any information regarding her whereabouts. In conclusion,

152. Consequently, taking into account the multi-offensive nature of the forced disappearance of persons, this Court concludes that the State is responsible for the violation of the rights recognized in Articles 7, 5.1, 5.2, 4.1 and 3 of the American Convention, in relation to Article 1.1 thereof and with the provisions of Article 1a) of the Inter-American Convention on Forced Disappearance, to the detriment of Teresa Díaz Aparicio.

#### ***B.4. Forced disappearance of Cory Clodolia Tenicela Tello***

153. Cory Clodolia Tenicela Tello, a student at the National University of Central Peru, was last seen on October 2, 1992. On October 14, 1992, the first complaint regarding the events that occurred was filed against Mrs. Tenicela Tello.

154. His disappearance is framed in a context in which university students, particularly those from the National University of Central Peru, were subjected to forced disappearances. In fact, the Court notes that between 1989 and 1993 there were more than 100 students from said study center who disappeared or were murdered by state agents, in the framework of the "anti-subversive struggle." The Court even notes that the year in which Cory Clodolia Tenicela Tello disappeared was the year with the most selective forced disappearances of students (*suprapara*. 53).

155. Added to this, this Court notes that there is evidence that links her disappearance to the activity of state agents. In the first place, there is an opinion of the Public Ministry, whose purpose was to indict two people for the alleged forced disappearance of 32 people, including Mrs. Tenicela Tello. In said opinion it is accused that she "was detained by members of the Peruvian [army]" on October 2, 1992 when she was in the center of the city because she did not carry documents and that since then she has been missing."<sup>241</sup>(*suprapara*. 88).Second, andOn October 20, 2014, the Third National Criminal Court issued an indictment and opened criminal proceedings against LDP for the crime against personal liberty in the form of aggravated kidnapping, to the detriment of Cory Clodolia Tenicela Tello, affirming that said act occurred in a context in which there were "indications, evidence and evidence

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<sup>240</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra*, para. 97; *Case of González Medina and family v. Dominican Republic. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of February 27, 2012. Series C No. 240, paras. 128 and 161, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, paras. 63 and 80.

<sup>241</sup> In fact, in said opinion, it is entrusted that other procedures be carried out in the future to determine the facts corresponding to the Cory Clodolia Tenicela Tello case, particularly, taking testimonial statements from Amadea Felipa Tello de Tenicela and Norma Juana Tenicela Tello.

reasonable, [...] that would allow us to affirm that it would be massive and systematic violations of fundamental rights, [...]”<sup>242</sup> therefore, an order to appear with restrictions was issued against the aforementioned Colonel. In addition to this, there are two complaints from the mother of the alleged victim, in one of which she stated that a lieutenant of the technical police gave her to understand that her daughter was detained in said city state institution and that she was involved in a common crime (*supra* para. 87). Finally, the Court notes that since October 2, 1992, there has been no trace of the whereabouts of Cory Clodolia Tenicela Tello, and that since October 14, 1992, the State was aware of her disappearance, without having presented any other hypothesis about her whereabouts.

156. In this way, the Court emphasizes that the disappearance of Cory Clodolia Tenicela Tello is subsumed in a context of systematic and generalized practice of forced disappearance in the framework of the fight against terrorism by the State. In the specific case, taking into account the profile of a university student, the almost 26 years that have elapsed without her having reappeared, and the evidence analyzed above, the Court deems that there are sufficient elements to corroborate that Mrs. Tenicela Tello was detained by state agents. In addition to this, the Court notes that the State has not provided any information regarding her whereabouts. In conclusion, the Court finds it proven that Cory Clodolia Tenicela Tello was subjected to a forced disappearance in this case.

157. Consequently, taking into account the multi-offensive nature of the forced disappearance of persons, this Court concludes that the State is responsible for the violation of the rights recognized in Articles 7, 5.1, 5.2, 4.1 and 3 of the American Convention, in relation to Article 1.1 thereof and with the provisions of Article 1a) of the Inter-American Convention on Forced Disappearance, to the detriment of Cory Clodolia Tenicela Tello.

### ***B.5. Forced disappearance of Néstor Rojas Medina***

158. Néstor Rojas Medina was last seen in January 1991. His disappearance was first reported on February 5, 1991, by Mrs. CSL.

159. The Court notes that there are various means of proof that allow it to be demonstrated that Néstor Rojas Medina was detained by state agents in 1991. In particular, the Court values: i) the conclusions of the Ombudsman's Office in its Verification Report issued in 2006, within the framework of the procedure to obtain a certificate of absence of the alleged victim; ii) the communications that Senator JHP had with the National Police Station in Tocache; iii) the complaint filed by CSL in 1991, and iv) the complaints filed by Marcelina Medina Negrón in 1991 and 2003, as well as the various statements she made.

160. The Court emphasizes that the Ombudsman issued a verification report in the framework of Law No. 28413, “[a]ccording to the information gathered by the Ombudsman, it has been established that on January 26, 1991, a group of policemen, who were carrying out a raid, detained Néstor Rojas Medina when he was passing through the vicinity of Aviación Avenue, district and province of Tocache, Department of San Martín. The police officers took the victim to the Tocache Police Station, and after a few days he was transferred to the Tocache Military Base. His whereabouts have been unknown since then.” In turn, it was concluded that it can be “reasonably presumed that Néstor Rojas Medina is absent due to forced disappearance as a consequence of the violence

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<sup>242</sup> *cf.* Indictment against LDP of the National Criminal Chamber, Third National Criminal Court, file 255-2014-0 of October 20, 2014 (file of proceedings before the Commission, fs. 1125 to 1143).

occurred between the years 1980 and 2000, since January 26, 1991" (*suprapara.* 115). In addition to this, the Court notes that the Ombudsman reached the aforementioned conclusion taking into account that Néstor Rojas Medina is included as a victim of forced disappearance in the final report of the CVR<sup>243</sup> and based on the statement of two relatives of Néstor Rojas Medina, who indicated to the Ombudsman that they were aware of his detention based on information provided by third parties.

161. The Court notes that the Ombudsman's conclusion is consistent both with the statements of Marcelina Medina Negrón and with the communications of Senator JHP. In this regard, Marcelina Medina Negrón indicated in her first statements that another person had told her that the person responsible for the arrest of her son was Commander "Tito" and that he was deprived of his liberty at the Tocache Police Station. Similarly, Senator JHP indicated that he communicated with Commander "Tito" and that he would have acknowledged the detention of Néstor Rojas Medina (*suprapara.* 101).

162. On the other hand, there are probative elements that could show inconsistencies or contradictions in relation to the possible detention of Néstor Rojas Medina. In particular, the Court notes that there are differences between the statements of Marcelina Medina Negrón regarding the manner, time and place of the alleged detention of Néstor Rojas Medina and the complaint filed by CSL in 1991.<sup>244</sup> It is also noted that Marcelina Medina Negrón in her statements indicated two different people as allegedly responsible: in her first statements she blamed Commander "Tito" for the disappearance of her son and, later, Commander Santos, the latter being the statement she made during the public hearing (*suprapara.* 97)<sup>245</sup>. Similarly, with respect to the complaint filed by CSL, the Court notes that after the initial complaint, and on two occasions, Mrs. CSL refused to ratify the content of her complaint and that her statement is not consistent with any of the narratives of Néstor Rojas Medina's mother about his detention. According to a report by the Peruvian National Police of July 2018, in its last statement made in the framework of the investigation initiated in 2016, CSL stated that he does not know the events that occurred against Néstor Rojas Medina, but that they referred to "Walter or Shapiruco" at the beginning, and that he did not know if he was detained by police officers. Likewise, according to the aforementioned report, HUC rendered a statement in terms similar to that of CSL (*supra* footnote 181). Finally, the Court takes note of

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<sup>243</sup> The case of Néstor Rojas Medina is included in the CVR report (*supra* footer 131).

<sup>244</sup> According to Mrs. Medina Negrón, the arrest occurred on January 26, 1991 on Avenida Tocache Aviation, while Mrs. CSL indicated that the arrest occurred on January 31, 1991 "by the Commerce strip." *cf.* Expansion of the complaint filed by Marcelina Medina Negrón on May 22, 1991 (file of proceedings before the Commission, page 1535), and complaint by CSL before the Tocache Prosecutor's Office on February 5, 1991 (evidence file, annex 52 to the Merits Report, page 496).

<sup>245</sup> In the statement rendered before the Court, Marcelina Medina Negrón indicated that "[i]n January when I traveled to Tocache, for a few things that they left us, then he traveled to Tocache, 'Mom', he tells me, 'we don't have capital, we don't have any money here, I'm going to go and sell the things we left behind to start work, with a little capital I work, and with that we're going to start mom' told me, my son left, he has never come back Until today, I live waiting for my son, there is no time for him to return, I know they have caught him, Commander Santos, they are the ones who know about my son, I would like them to tell me the truth, what have they done with my son?" *cf.* Statement made by Marcelina Medina Negrón during the public hearing before the Court. *cf.* Statement rendered by Marcelina Medina Negrón before the Truth and Reconciliation Commission on May 8, 2002 (file of proceedings before the Commission, page 1861); Complaint filed by Marcelina Medina Negrón on March 8, 1991, before the Office of the Prosecutor of the Nation (evidence file, case file before the IACHR, fs. 1932 and 1933); Extension of the complaint filed by Marcelina Medina Negrón on May 22, 1991 (file of proceedings before the IACHR, page 1535); Document presented by Marcelina Medina Negrón to the Presidency on March 16, 1991 (file of proceedings before the IACHR, page 1632); Statement of inquiry to Marcelina Medina Negrón on September 22, 1991 before the Mixed Provincial Prosecutor's Office (file of proceedings before the IACHR, page 1940),

a communication from the General Directorate of Migrations, from which two migratory movements in 1995 carried out by Néstor Rojas Medina (*suprapara*. 105).

163. Notwithstanding the foregoing, the Court considers that regardless of the differences regarding the way, time and place in which the disappearance of Néstor Rojas Medina could have occurred, according to the statements of his mother and the first statement of CSL, there is consistency in the fact that Néstor Rojas Medina was detained by state agents while he was in the town of Tocache at the end of January 1991, and to date he is missing, and that despite the fact that more than 27 years have elapsed since the events and In the initial complaint filed by Mrs. CSL, the State has not offered a convincing hypothesis about her whereabouts. Furthermore, the Court considers that the evidence available, particularly the results of the investigation carried out by the Ombudsman's Office in its Verification Report, generate in this Court the conviction that Néstor Rojas Medina was detained by state agents. In addition, it should be noted that his disappearance took place in the context of the systematic and widespread practice of forced disappearance in the framework of the State's fight against terrorism. In conclusion, the Court finds it proven that Néstor Rojas Medina was subjected to a forced disappearance in this case.

164. Consequently, taking into account the multi-offensive nature of the forced disappearance of persons (*suprapara*. 134), this Court concludes that the State is responsible for the violation of the rights recognized in Articles 7, 5.1, 5.2, 4.1 and 3 of the American Convention, in relation to Article 1.1 thereof and with the provisions of Article Ia) of the Inter-American Convention on Forced Disappearance, to the detriment of Néstor Rojas Medina.

#### ***B.6. Forced disappearance of Santiago Antezana Cueto***

165. In this section, the Court is responsible for analyzing the international responsibility of the State with respect to the forced disappearance of Santiago Antezana Cueto. Unlike the other cases, the State indicated that, as resolved in the judgment issued by the National Criminal Chamber, in the present case the forced disappearance was established to the detriment of Santiago Antezana Cueto and considered that the Court should not rule, since the corresponding investigation was carried out and the individual criminal responsibility of an accused and the civil reparation that corresponded to his next of kin was determined.

166. This Court has already stated that the Inter-American Human Rights System (hereinafter also the "Inter-American System") "consists of a national level that consists of the obligation of each State to guarantee the rights and freedoms provided for in the Convention and to punish the violations that are committed" and that "if a specific case is not resolved at the domestic or national stage, the Convention provides for an international level in which the main bodies are the Commission and this Court." Likewise, this Court also indicated that "when a matter has been definitively resolved in the domestic order according to the clauses of the Convention, it is not necessary to bring it to this Court for its 'approval' or 'confirmation'".<sup>246</sup>.

167. From the foregoing it can be deduced that, in the Inter-American System, there is a dynamic and complementary control of the conventional obligations of the States to respect and guarantee human rights, jointly between the internal authorities (primarily obligated) and the international instances (in a complementary manner), in order to

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<sup>246</sup> Cf. *Case of Las Palmeras v. Colombia. Background*. Judgment of December 6, 2001. Series C No. 90, para. 33, and *Case of Tarazona Arrieta and others vs. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of October 15, 2014. Series C No. 286, para. 136.

so that the decision criteria, and the protection mechanisms, both national and international, can be conformed and adapted to each other. In this sense, the Court has indicated that State responsibility under the Convention can only be demanded at the international level after the State has had the opportunity to acknowledge, if applicable, a violation of a right, and to repair the damage caused by its own means.<sup>247</sup>.

168. Based on the foregoing, this Court recalls that the fact that the State acknowledges international responsibility, and affirms that it repaired it, does not mean that it inhibits it from making determinations on the legal consequences that arise from an act that violates the Convention, even when the State alleges that said act ceased and was repaired.<sup>248</sup>.

169. Regarding whether the alleged international wrongful act ceased, it should be noted that, as previously indicated, forced disappearance is a continuous wrongful act, which does not cease until the whereabouts of the disappeared person or their remains are determined (*supra* para. 134). In the present case, it is noted that the remains of Santiago Antezana Cueto have not been located or returned to his relatives, which is why it must be considered that his forced disappearance persists. Consequently, it cannot be considered that the international wrongful act has ceased.

170. Bearing in mind the foregoing, the Court notes that the State affirmed that Santiago Antezana Cueto was the subject of a forced disappearance as established in the Judgment of the National Criminal Chamber, of December 12, 2013. Indeed, as can be seen from said judgment, Mr. Antezana Cueto was detained and admitted to the Acobamba Military Base to later be disappeared, where the convicted José Antonio Esquivel Mora was in charge, in May 1984, as Chief of said Military Base. Consequently, the army authorities that had Santiago Antezana Cueto in their custody were responsible for safeguarding his rights. 34 years after his arrest, his relatives do not know his whereabouts, despite the steps taken.

171. 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>249</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>250</sup>.

172. Forced disappearance has a multi-offensive nature. According to the reiterated jurisprudence of this Court, when the occurrence of a forced disappearance is demonstrated, a violation of various rights protected by the Convention is configured. First, the right to personal liberty, without prejudice to whether or not the arrest or deprivation of liberty was carried out in accordance with the law. Second, to the right to personal integrity, because the mere fact of prolonged isolation and coercive solitary confinement represents

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<sup>247</sup> Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary Exceptions, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 143, and *Case of Amrhein et al. v. Costa Rica, supra*, para. 99.

<sup>248</sup> Cf. *Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 95.

<sup>249</sup> Cf. *Case of Radilla Pacheco v. Mexico, supra*, paras. 138 to 140, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of February 15, 2017. Series C No. 332, para. 133.

<sup>250</sup> Cf. *Case of Heliodoro Portugal v. Panama, supra*, para. 112, and *Case of Vásquez Durand et al. v. Ecuador, supra*, para. 133.

cruel and inhuman treatment in contradiction with articles 5.1 and 5.2 of the Convention<sup>251</sup>. Third, to the right to life, since the victim is in an aggravated situation of vulnerability, from which arises the risk that their right to life will be violated.<sup>252</sup> Fourth, to the right to recognition of legal personality because forced disappearance implies the removal of the protection of the law or the violation of the personal and legal security of the individual that directly prevents the recognition of legal personality<sup>253</sup>. Additionally, forced disappearance also constitutes a violation of Article 1a) of the Inter-American Convention on Forced Disappearance, which prohibits its occurrence.

173. In this case, in addition, a violation of article 5.2 of the American Convention. In this regard, the Court notes that in the domestic jurisdiction information was received from Máximo Antezana Espeza, who claimed to be a direct witness to the alleged acts of torture suffered by Santiago Antezana Cueto (*suprapara*. 118). Additionally, this Court considers that Rosa Carcausto Paco, on several occasions<sup>254</sup>, provided indirect testimony about events that Máximo Antezana had told him, that his cohabitant had been tortured, as well as the statement of a relative of a person presumably disappeared, CAR, given on May 25, 2002, before the CVR, in which she stated that one occasion she entered the Acobamba barracks and saw, among others, Santiago Antezana Cueto and Máximo Antezana who "were as if asking for forgiveness with the pick and the shovel on their shoulders[,] [we] were digging"<sup>255</sup>. In addition, it is considered that at the time of the facts there was a context that included the use of torture prior to the disappearance of detainees (*suprapara*. 49). These statements, analyzed in the context of the forced disappearance of Santiago Antezana Cueto, allow the Court to consider it sufficiently proven that in the present case the said victim was subjected to torture, in violation of the provisions of Article 5(2) of the American Convention.

174. Therefore, taking into account that the Court concluded that Mr. Antezana Cueto was the victim of forced disappearance and torture, this Court concludes that the State is responsible for the violation of the rights recognized in Articles 7, 5.1, 5.2, 4.1, and 3 of the American Convention, in relation to Article 1.1 thereof and with the provisions of Article 1a) of the Inter-American Convention on Forced Disappearance, to the detriment of Santiago Antezana Cueto. etc.

### **B.7. Conclusion**

175. From all of the foregoing, this Court concludes that the State is responsible for the violation of the rights to recognition of legal personality, to life, to personal integrity, and to personal liberty recognized in Articles 3, 4.1, 5.1, 5.2, and 7 of the American Convention, in relation to Article 1.1 of the Convention, and in relation to

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<sup>251</sup> *cf. Case of Velásquez Rodríguez v. Honduras. Background, above, paras. 156 and 187, and Case of Munárriz Escobar et al. v. Peru, supra, para. 86.*

<sup>252</sup> *cf. Case of Radilla Pacheco v. Mexico, supra, para. 152, and Case of Munárriz Escobar et al. v. Peru, supra, para. 86.*

<sup>253</sup> *Case of Anzualdo Castro v. Peru, supra, paras. 90 and 92, and Case of Munárriz Escobar et al. v. Peru, supra, para. 86.*

<sup>254</sup> *cf. Criminal complaint filed with the Acobamba-Huancavelica Provincial Criminal Prosecutor's Office by Mrs. Carcausto Paco on November 25, 2004 (evidence file, annex 42 to the Merits Report, fs. 298 to 314); and Statement of Rosa Carcausto Paco, supra. In said statement, Rosa Carcausto Paco stated that [Máximo Antezana] informed her that Santiago Antezana Cueto and the other detainees "had tortured him by cutting him on the forehead and submerging him [in] cold water and the wounds he had were getting infected, they made them dig up dirt, telling them that those graves were for them."*

<sup>255</sup> *cf. Communication from the petitioners of July 4, 2011. Statement of CAR before the CVR on May 25, 2002 (evidence file, annex 49 to the Merits Report, fs. 420 to 422).*

with the provisions of Article Ia) of the Inter-American Convention on Forced Disappearance, to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto.

## VIII.2.

### **RIGHT TO JUDICIAL GUARANTEES<sup>256</sup> AND JUDICIAL PROTECTION<sup>257</sup> REGARD OF THE VICTIMS OF ENFORCED DISAPPEARANCE AND THEIR FAMILIES AND THE OBLIGATIONS DERIVED FROM ARTICLE IB OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS AND REGARDING THE VICTIM OF TORTURE AND THE OBLIGATIONS DERIVED FROM ARTICLES 1, 6 AND 8 OF THE INTER-AMERICAN CONVENTION TO PREVENT AND PUNISH THE TORTURE<sup>258</sup>**

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

176. The *Commission* indicated that it is the responsibility of the State to demonstrate that its authorities proceeded diligently with the investigations, after being informed of a forced disappearance. He reiterated that whenever there are reasonable grounds to presume that a person has been subjected to forced disappearance, the State must initiate an investigation. *ex officio*, without delay and in a serious, impartial and effective manner. He warned that in all cases the State has not provided information on specific actions taken immediately, upon learning of the reported disappearances, to find the whereabouts of the alleged victims and protect their lives and integrity. All the criminal proceedings that were initiated in this regard have been subject to unjustified delays and prolonged periods in which no steps were taken to clarify the facts. The few procedures that have been carried out in each of the

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<sup>256</sup> Article 8 of the Convention establishes: "Judicial Guarantees. 1. Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, previously established by law, in the substantiation of any criminal accusation made against it, or for the determination of its rights and obligations of a civil, labor, fiscal or any other nature."

<sup>257</sup> Article 25 of the Convention establishes: "Judicial Protection: 1. Every person has the right to a simple and prompt remedy or to any other effective remedy before the competent judges or courts, that protects them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed by persons acting in the exercise of their official functions. 2. The States Parties undertake: a) to guarantee that the competent authority established by the legal system of the State will decide on the rights of any person who files such a remedy; b) to develop the possibilities of judicial recourse, and c) to guarantee the compliance, by the competent authorities, of any decision in which the recourse has been deemed appropriate".

<sup>258</sup> Article Ib of the Inter-American Convention on Forced Disappearance of Persons indicates that: "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."

Article 1 of the Inter-American Convention to Prevent and Punish Torture establishes that: "The States Parties undertake to prevent and punish torture under the terms of this Convention."

Article 6 of said Convention establishes that: "In accordance with the provisions of article 1, the States parties shall take effective measures to prevent and punish torture within the scope of their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit such acts constitute crimes under their criminal law, establishing to punish them severe sanctions that take into account their seriousness. Likewise, the States Parties shall take effective measures to prevent and punish, in addition, other cruel, inhuman or degrading treatment or punishment within the scope of their jurisdiction".

Article 8 of said Convention establishes that: "States parties shall guarantee to any person who denounces having been subjected to torture within the scope of their jurisdiction the right to have the case examined impartially. Likewise, when there is a complaint or well-founded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed *ex officio* and immediately to carry out an investigation into the case and initiate, when appropriate, the respective criminal proceedings. Once the internal legal system of the respective State and the resources that it provides have been exhausted, the case may be submitted to international instances whose jurisdiction has been accepted by that State."

cases are insufficient and do not respond to concrete indications. The information available indicates that the very limited investigative activity does not respond to said context or to the *modus operandi* specifically established by the TRC. In this sense, the Commission considered that the State has incurred an excessive delay in the investigations and that they are not based on the complexity of the matter, but on the lack of due diligence on the part of the State.

177. It added that Amnesty Laws No. 26,479 and No. 26,491 were in force in the State from 1995 to 2001, which prevented investigations of serious human rights violations committed during the armed conflict. Such laws are unconventional. Taking into account the validity of said laws and the lack of information on investigations carried out during their validity, the Commission considered it sufficiently proven that said laws constituted a legal obstacle that impeded the investigations of the forced disappearances committed.

178. The Commission concluded that the State has not provided the necessary means to comply with its obligation to investigate, prosecute, and punish, within a reasonable time and with due diligence, those responsible for the five forced disappearances. Consequently, the State violated the rights to judicial guarantees and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of the alleged victims and their next of kin, as well as the violation of Article 1.b) of the CIDFP. Finally, the Commission presented specific arguments in relation to the alleged violation of judicial guarantees and judicial protection, to the detriment of each alleged victim.<sup>259</sup>

179. The **representatives** They stated that the State violated the rights to judicial guarantees and judicial protection, to the detriment of the alleged victims. Likewise, they considered that the State failed to comply with its obligation to adapt domestic law to the Convention, due to the validity of the Amnesty Laws and their application in two of the cases. *sub judge*. They referred to this line to the lack of an adequate classification of the crime of

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<sup>259</sup> With regard to Wilfredo Terrones Silva, he stressed that no criminal investigation was initiated into the crime denounced, nor were the immediate actions taken for a complaint of forced disappearance. As of the date of preparation of the Merits Report, the criminal investigation into the disappearance of Wilfredo Terrones Silva had not yet been initiated, which reveals the breach of the duty to investigate. With respect to Teresa Díaz Aparicio, it observed procedural inactivity and a lack of proceedings from 1993 to 2002. In September 2002, more than 10 years after the forced disappearance, the investigation was resumed and, for the first time, it began to collect statements from relatives and other people close to the disappeared person, as well as from different State entities. By that date, important evidence had already been lost, including the possibility of investigating the mother and one of the brothers of Teresa Díaz Aparicio, due to her death. Regarding Cory Clodolia Tenicela Tello, it indicated that her mother filed the criminal complaint and a writ of habeas corpus in October 1992. The Commission observed that it was not until July 2003 that her case was included in the investigations that were being carried out. Through an opinion, in September 2013, a complaint was formalized against the Commander of the 31st Division of the Peruvian Army and the Chief of the UNCP Civic Action base. The Commission does not have information on procedures that have been carried out since September 2013. Regarding Néstor Rojas Medina, it considered that there was a violation of the guarantee of reasonable time, and emphasized that, since the complaint filed in 1991, it was in 2000 that the investigation was sent to the Police to carry it out; that after Marcelina Medina Negrón's complaint in 2004, they do not have information on any procedure carried out between 2005 and 2011; that there is no information on the proceedings carried out in 2011, and that the State "limited itself to informing that in January 2013, the First Corporate Provincial Prosecutor of Tocache declared the investigation closed." Finally, regarding Santiago Antezana Cueto, he observed that although a complaint was filed for his disappearance in March 1985, it was not until 1992 that his partner went to the Public Ministry to inquire about the investigation and expand the complaint. The start of a new investigation was ordered because it was assumed that the first complaint was in the headquarters whose files "were burned during the subversive attack that took place in 1989." There is no information on any procedure followed after the complaints. In November 2004, a new complaint was filed against the captain of the Peruvian army for the forced disappearance of Santiago Antezana Cueto. On July 31, 2009, the Huanavelica Provincial Criminal Prosecutor filed a criminal complaint against him. On July 9, 2013, the process was in the oral trial phase and at the time the report was issued, the Commission did not have updated information on the outcome. In November 2004, a new complaint was filed against the captain of the Peruvian army for the forced disappearance of Santiago Antezana Cueto. On July 31, 2009, the Huanavelica Provincial Criminal Prosecutor filed a criminal complaint against him. On July 9, 2013, the process was in the oral trial phase and at the time the report was issued, the Commission did not have updated information on the outcome. In November 2004, a new complaint was filed against the captain of the Peruvian army for the forced disappearance of Santiago Antezana Cueto. On July 31, 2009, the Huanavelica Provincial Criminal Prosecutor filed a criminal complaint against him. On July 9, 2013, the process was in the oral trial phase and at the time the report was issued, the Commission did not have updated information on the outcome.



forced disappearance and the order provided for in Plenary Agreement No. 9-2009/CJ-116. Additionally, they presented specific considerations in relation to four of the five cases<sup>260</sup>.

180. The **State** considered that it is not responsible for the violation of the rights to judicial guarantees and judicial protection of the alleged victims. In 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 some of them, they are not serious enough to establish an international responsibility of the State for a violation of those rights. Their argument is based on the fact that the reasonable term has not been violated due to the complexity of the matter, the diligent conduct of the authorities and the lack of participation of the interested parties. In addition, the State indicated that with respect to the specific case of Santiago Antezana Cueto and Néstor Rojas Medina, the legislative modifications that it has made, allow us to affirm that the Amnesty Laws ceased to be an obstacle to resolve the processes. So much so that the process regarding the first has already been resolved and, regarding the second, it has already been reopened. Likewise, it presented specific considerations regarding each of the cases.<sup>261</sup>

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<sup>260</sup> Regarding Wilfredo Terrones Silva, they mentioned that the factual conditions have not been clarified, nor have those responsible been punished. Additionally, the hypotheses indicated from the beginning that there are no indications that it was a kidnapping, which seriously affected the investigations. Regarding Teresa Díaz Aparicio, they indicated that the State failed in its duty to initiate an investigation *ex officio* and without delay, despite being aware of their situation. This is accompanied by an unjustified delay and the lack of an effective remedy to guarantee access to justice. Regarding Néstor Rojas Medina, they argued that "the State has not carried out a due diligence investigation into the arrest and subsequent disappearance of Néstor Rojas Medina" given that the investigations initiated "have not obtained the expected result, that is, finding out the whereabouts of the victim," and that "no very important steps were taken" during the first investigation that began in 1991, and that "[t]he State has not carried out an investigation against those responsible for the arrest and subsequent forced disappearance of Néstor Rojas Medina within a reasonable period of time", given that "more than 25 years after the forced disappearance of the victim, the investigation carried out internally is still in its infancy and it has not made it possible to determine the alleged perpetrators and masterminds of the facts." Finally, they indicated that "the right to the truth" was violated to the detriment of their next of kin, as was "the obligation to combat the situation of impunity for the forced disappearance of the victim. Finally, regarding Santiago Antezana Cueto, they made reference to the fact that no investigation was carried out as well as "the obligation to combat the situation of impunity for the forced disappearance of the victim. Finally, regarding Santiago Antezana Cueto, they made reference to the fact that no investigation was carried out *ex officio*, and that it was their relatives who had to carry out the initial procedures. In addition, the Amnesty Laws limited the investigation of the denounced facts. They also indicated that a sentence has already been handed down, but it is not enough to comply with the obligation to investigate, prosecute, and punish, since it depends on its execution. Nor have all those responsible been sentenced, nor have their relatives been adequately compensated. They did not present specific allegations in relation to Cory Clodolia Tenicela Tello.

<sup>261</sup> With respect to Wilfredo Terrones Silva, he indicated that his next of kin did not cooperate with the task of clarifying the facts because they had to insist on having his statements and reordering said proceedings. The State indicated that the prosecutor's investigation process has continued and the Second Supraprovincial Criminal Prosecutor's Office has carried out various procedures in this regard; therefore, it considered that the investigation into the facts of the case of Mr. Terrones Silva continues normally. Regarding Teresa Díaz Aparicio, she mentioned that in relation to the participation of the interested parties in the process, no appeal was filed to challenge the decision to deny the habeas corpus filed. Therefore, the adequate participation of his relatives is not proven. Regarding the investigation of Teresa Díaz Aparicio, the State argued that the prosecutor's investigation process has continued and the Second Supraprovincial Criminal Prosecutor's Office has carried out various procedures in this regard. Regarding Cory Clodolia, Tenicela Tello argued that they did not make particular allegations in this case. She indicated that recently, through an official letter, the First National Criminal Superior Prosecutor's Office mentioned that the case is still under study in order to issue the corresponding pronouncement. With regard to Néstor Rojas Medina, she highlighted that "the petitioners had the opportunity to file the corresponding challenge" against the Resolution of January 2013 that declared not to formalize or continue the investigation by the Public Ministry "which they did not do." Besides, He stated that since 2017 several investigative procedures have been carried out. Finally, regarding Santiago Antezana Cueto, he indicated that there is already a final conviction, which means that the obligation to investigate, prosecute, and punish has already been fulfilled. He added that it has not been proven that the failure to capture the person responsible for the forced disappearance has had an impact on the process or that it has not been carried out with due diligence. On the other hand, he affirmed that the participation and responsibility of the facts is a task reserved to the Public Ministry and the Judiciary, that their work has been duly accredited and that no evidence has been offered to demonstrate an error in this regard. At the discretion of the State, the action was adapted to the due diligence guidelines necessary to satisfy the right of the next of kin to access justice. He stressed that in this case, which is the only one with a judicial pronouncement, it was not applied by Plenary Agreement No. 9-2009 / CJ-116. Therefore, it is inappropriate for the Court to rule on its validity. For other

## B. Considerations of the Court

181. 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 Judgment, this Court has highlighted the importance of the State's duty to investigate and punish human rights violations.<sup>262</sup>, which acquires particular importance given the seriousness of the crimes committed and the nature of the rights violated<sup>263</sup>. This obligation also arises from other inter-American instruments. Thus, in cases of forced disappearances, the obligation to investigate is reinforced by Article Ib) of the Inter-American Convention on Forced Disappearance, in force for the State since March 15, 2002.

182. On the other hand, the Court has consistently indicated that the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty and not 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>264</sup>. In addition, the investigation must be serious, objective and effective, and be oriented towards determining the truth and the persecution, capture, and eventual prosecution and punishment of the perpetrators of the facts.<sup>265</sup>. Likewise, due diligence requires that the investigating body carry out all the necessary actions and inquiries to achieve the desired result.<sup>266</sup>.

183. However, the possibility of the Court, within the scope of its jurisdiction, contributing and complementary, to examine the internal investigation procedures<sup>267</sup>, can lead to the determination of failures in due diligence in the same<sup>268</sup>. However, this will be appropriate as long as it is evidenced that the shortcomings that are alleged could have affected the investigation as a whole, so that "as time passes, the possibility of obtaining and presenting pertinent evidence that allows clarifying the facts and determining the corresponding responsibilities is unduly affected."<sup>269</sup>. In this sense, it should not be assumed that failures in specific investigative measures have a negative impact on the entire process if, despite them, the investigation had an effective result in determining the facts.<sup>270</sup>.

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On the other hand, the State argued that the investigation into the alleged torture has continued and various procedures have been carried out by the Second Supraprovincial Prosecutor's Office, so that the State's obligations in this regard are being fulfilled.

<sup>262</sup> Cf., *inter alia*, *Case of Velásquez Rodríguez v. Honduras. Bottom, above*, para. 166; *Case IV vs. Bolivia. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 207, and *Case of Herzog et al. v. Brazil, supra*, para. 232.

<sup>263</sup> Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 128, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 92.

<sup>264</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 177, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of March 13, 2018. Series C No. 352, para. 102.

<sup>265</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 102.

<sup>266</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 102.

<sup>267</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Background*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 117.

<sup>268</sup> Cf. *Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2016. Series C No. 325, para. 282, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 117.

<sup>269</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. 172, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 80.

<sup>270</sup> Cf. *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 167, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 81.

184. Based on the facts of this case and the arguments raised by the parties and the Commission, the Court will proceed to analyze the alleged violation of judicial guarantees and judicial protection, referring to: 1) violation of the guarantee of reasonable time in investigations; 2) violation of the duty of the State to initiate investigations *ex officio* and to follow investigations with due diligence; 3) lack of information regarding the search for the whereabouts of the alleged victims; 4) failure to investigate the alleged acts of torture perpetrated against Santiago Antezana; 5) lack of execution of the conviction handed down against the perpetrator of the forced disappearance of Santiago Antezana, and 6) the violation of the right to the truth.

### ***B.1. Guarantee of reasonable time in investigations***

185. The Court has indicated that the right of access to justice implies that everything necessary to know the truth of what happened and punish those responsible is done within a reasonable time.<sup>271</sup> In this sense, this Tribunal considers that the process ends when the final and firm judgment is issued in the matter, with which the jurisdiction is exhausted and that, particularly in criminal matters, said period must include the entire procedure, including the appeals that could eventually be filed.<sup>272</sup> The Court has considered that a prolonged delay may constitute, by itself, a violation of judicial guarantees.<sup>273</sup>

186. Although it is true that in order to analyze its reasonable term, in general terms the Court must consider the overall duration of a proceeding until the final judgment is delivered.<sup>274</sup>, in certain particular situations a specific assessment of its different stages may be pertinent<sup>275</sup>.

187. Next, the Court will refer to the investigations carried out regarding the forced disappearance of each of the five victims in this case.

188. Regarding Santiago Antezana Cueto, the Court notes that to date only in this case the investigation and corresponding criminal proceedings have concluded with a final judgment, in which the criminal responsibility of only one mediate perpetrator of the facts was determined for his forced disappearance. Said judgment was handed down on December 12, 2013, despite the fact that his disappearance occurred in 1984 and the State became aware of it in 1985, that is, after more than 34 years had elapsed since the execution of the facts and the filing of the complaint. In addition, to date the aforementioned sentence has not been carried out because the person responsible for the facts is a fugitive from justice, without the State having taken the due diligence to capture him (*supraparas*. 126 and 127).

189. Regarding the forced disappearance of Cory Clodolia Tenicela Tello that occurred on October 2, 1992, at least as of October 14, 1992, the State became aware of the disappearance due to the complaint filed by her mother, Amadea Tello, before the Prosecutor's Office.

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<sup>271</sup> Cf. *Case of Bulacio v. Argentina. Merits, Reparations and Costs*, Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 79.

<sup>272</sup> Cf. *Case of Suárez Rosero v. Ecuador. Background*, Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case VRP, VPC Vs. Nicaragua. Preliminary Exceptions, Merits, Reparations and Costs, supra*, para. 275. 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 VRP, VPC v. Nicaragua, supra*, para. 275.

<sup>274</sup> Cf. *Case of Suárez Rosero v. Ecuador. Background, supra*, para. 71, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 106.

<sup>275</sup> Cf. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs*, Judgment of November 20, 2013. Series C No. 270, para. 403, and *Case of Carvajal Carvajal et al. v. Colombia, supra*, para. 106.

Junin Provincial (*suprapara*. 153)<sup>276</sup>. The investigation was added in 2003 to the criminal proceedings of another 32 presumed disappeared persons, which is pending judicial resolution. After more than 26 years have elapsed since the execution of the facts and the first complaint filed, the criminal proceeding is pending the final decision (*suprapara*. 92).

190. As regards the forced disappearance of Néstor Rojas Medina that occurred in January 1991, three complaints were filed, and at least as of February 5, 1991, the State reportedly became aware of it, through the first complaint filed with the Tocache Province Prosecutor's Office. Of the three complaints filed, according to the evidence available in the file, only two of them took steps to investigate the facts, namely: a) in the investigation carried out by the Tocache Provincial Prosecutor's Office, which began in February 1991 (*supraparas*. 99 to 103), and b) in the one carried out by the Special Prosecutor for Forced Disappearances, started in September 2004 (*supraparas*. 105 to 109). As regards the complaint filed in March 1991 with the National Prosecutor's Office, it does not appear from the file that any procedure was carried out (*suprapara*. 104). More than 26 years after the execution of the facts and the first complaint filed, the investigation continues in its early stages.

191. Regarding the forced disappearances of Wilfredo Terrones Silva and Teresa Díaz Aparicio that occurred on February 28, 1992 and August 19, 1992, respectively, investigations for the crime of forced disappearance were recently opened, more than 26 years after the events occurred, in accordance with the provisions of October 10, 2016 by the Coordination of the Superior National Criminal Prosecutor and Prosecutor Supraprovincial Criminal of the Public Ministry. These investigations are in their early stages (*suprapara*. 82). In the case of Mr. Terrones Silva, at least as of August 28, 1992, the date on which his disappearance was reported to the Tenth Criminal Prosecutor of Lima, the State having taken notice of it (*suprapara*. 58). In the case of Teresa Díaz Aparicio, the State reportedly became aware of her disappearance, at least, as of February 25, 2002.<sup>277</sup> when his brother filed an appeal for *habeas corpus* for his disappearance (*suprapara*. 70). However, it was not until May 30, 2002, that the First Corporate Criminal Chamber declared the *habeas corpus* appeal unfounded and by order of the Public Prosecutor's Office, on September 30, 2002, the Provincial Prosecutor's Office Specialized in Forced Disappearances, ordered the opening of an investigation (*suprapara*. 72). In the years 2009 and 2014, when no merit was found to file a criminal complaint, the provisional file of the proceedings was ordered, and it was not until 2017 that the investigation was resumed and a series of proceedings have been scheduled (*supra* footnote 99). More than 26 years after the execution of the acts began and 26 and 16 years, respectively, after the complaints were filed in each case, the investigation is in its early stages, and the possible perpetrators of the facts have not been identified, prosecuted, and eventually punished.

192. From the foregoing, in all cases the investigations have excessively exceeded the period that can be considered reasonable.

193. Precisely due to the time elapsed, it is not necessary to carry out an analysis

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<sup>276</sup> Subsequently, on October 26, 1992, his mother filed a writ of *habeas corpus* before the Huancayo Criminal Court (*supra* para. 87).

<sup>277</sup> Although the State judicially took cognizance of the facts regarding Mrs. Díaz Aparicio through a *habeas corpus* petition filed by her brother, it should be noted that in view of the petition filed before the Inter-American Commission and communicated to the State on September 2, 1992, since 1992 Peru carried out various procedures related to her disappearance.

exhaustive in relation to the elements of the reasonable time developed by the Court<sup>278</sup>. Indeed, this Tribunal considers that a prolonged delay from the reporting of the disappearance of the aforementioned persons constitutes, in principle, by itself, a violation of judicial guarantees.<sup>279</sup>

194. Consequently, the Court finds that the State has violated its obligation to guarantee a reasonable period of time for the investigation and criminal proceedings for the forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto.

### ***B.2. Violation of the duty of the State to initiate ex officio investigations and to follow up on the investigations with due diligence***

195. This Court has indicated that whenever there are reasonable grounds to suspect that a person has been subjected to forced disappearance, a criminal investigation must be initiated.<sup>280</sup> 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>281</sup>. In any case, any state authority, public official or individual who has received news of acts aimed at the forced disappearance of persons must report it immediately.<sup>282</sup> Likewise, the Court has established that the duty to investigate events of this nature subsists as long as uncertainty remains regarding the final fate of the disappeared persons, since the right of the next of kin of the victims 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>283</sup>

196. Based on the information available in the file, the Court notes that in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, there is a lack of a proper investigation that made it difficult to gather more information that would allow the corresponding authorities to identify, prosecute and, where appropriate, punish those possibly responsible for the forced disappearance of the aforementioned persons. Indeed, in the investigations corresponding to the respective cases up to 2016, the Court notes that:

to. the proceedings carried out consisted mainly of requests for information from PNP personnel regarding the investigations into the forced disappearance of Wilfredo Terrones Silva, Cory Clodolia

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<sup>278</sup> This would imply, in order to determine if there was reasonableness in the time elapsed by the proceedings, carefully examining different elements of the case: a) complexity of the matter; b) procedural activity of the interested party; c) conduct of the judicial authorities, and d) the affectation generated in the legal situation of the person involved in the process. *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 Favela Nova Brasília v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333. para. 218.

<sup>279</sup> *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago, supra*, para. 145, and *Gudiel case Álvarez et al. ("Military Newspaper") v. Guatemala. Reparations and Costs Fund*. Judgment of November 20, 2012. Series C No. 253, para. 261.

<sup>280</sup> *Cf. Case of Anzualdo Castro v. Peru, supra*, para. 65, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 95. *Cf. Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 177, and *Case of Munárriz Escobar et al. Peru, supra*, para. 95.

<sup>282</sup> *Cf. Case of Anzualdo Castro v. Peru, supra*, para. 65, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 95. *Cf. Case of Velásquez Rodríguez v. Honduras. Background, supra*, para. 181, and *Case of Munárriz Escobar et al. Peru, supra*, para. 104.

Tenicela Tello and Nestor Rojas Medina. These proceedings concluded, in general, without results ( *supraparas.* 61, 63, 64, 73, 74, 77, 78, 81, 82, 86, 87, 99, 103 and 105, 108 and 109);

b. most of the declarations required in the framework of the investigation, in the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio and Néstor Rojas Medina, were addressed mainly to their next of kin. Some of the required statements could not be collected ( *supraparas.* 75, 76, 87, 101, 102 and 105); c.

in the cases of Wilfredo Terrones Silva, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, initial proceedings were carried out between 1991 and 1992. Subsequently, the proceedings were carried out sporadically<sup>284</sup>; d.

In the cases of Teresa Díaz Aparicio and Néstor Rojas Medina, the investigations were archived in 2009 and 2000, respectively, since the alleged perpetrators of the aforementioned forced disappearances could not be identified (*supra* paras. 78 and 103). In the case of Mrs. Díaz Aparicio, the investigation was reopened in 2012 (*suprapara.* 79), which would have been provisionally archived in February 2014, according to the witness Marcelita del Rosario Gutiérrez Vallejos. Similarly, in the case of Néstor Rojas Medina, the Court notes that with respect to the complaint filed in 2004, the Prosecutor's Office determined, in 2013, that "it is not appropriate to formalize or continue with the preparatory investigation" of said facts (*suprapara.* 108);

and. Initially, in none of the four cases were statements requested inquiries of the police officials who were part of the police or military institutions that could have been involved in the forced disappearance of the alleged victims;

F. In the case of Wilfredo Terrones Silva, the other approach taken to the investigation was aimed at determining if he was in his legal study, among others, which led to the conclusion that, according to the State, he was in hiding (*supraparas.* 60 and 144). g.

In the case of Teresa Díaz Aparicio, an investigation was not immediately opened into her forced disappearance despite the fact that on February 25, 2002, Federico Díaz Aparicio filed a writ of habeas corpus for her forced disappearance (*supra* para. 70). The investigation was opened on May 30, 2002, when said appeal was declared unfounded (*suprapara.* 72), and

h. In the case of Néstor Rojas Medina, possible different hypotheses concerning his forced disappearance were not investigated (*suprapara.* 103).

197. It should also be noted that it was not until July 27, 2016, in light of the Commission's recommendations regarding said cases, that it was decided to reiterate information to the corresponding Prosecutor's Offices on possible investigations or proceedings for the disappearance of said persons. Indeed, it was in 2016 that the investigation was ordered for the crime of forced disappearance, to the detriment of Wilfredo Terrones and Teresa Díaz Aparicio(*supraparas.* 63 and 81), while those corresponding to Cory Clodolia Tenicela Tello and Néstor Rojas Medina continued.

198. Similarly, in the case of Santiago Antezana Cueto, although in his particular case there is a final judgment, through which the criminal responsibility of a mediate perpetrator was declared for his forced disappearance, it is noted that:

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<sup>284</sup> Indeed, the Court notes that: 1) in the case of Wilfredo Terrones Silva, in the periods from 1993 to 1998, 1998 to 2004 and 2005 to 2011; 2) in the case of Cory Clodolia Tenicela Tello, in the periods from 1993 to 2003, 2003 to 2010 and 2010 to 2013, and 3) in the case of Néstor Rojas Medina, in the periods from 1992 to 2000, 2000 to 2004, 2004 to 2011, and 2011 As of 2016, there is an absence of steps according to the body of evidence available to the Court.

to. In the years 1984 and 1985 the relatives of Santiago Antezana Cueto presented various complaints and requests for information regarding the facts. Despite these presentations, there is no record in the file before the Court of any steps taken by the State in order to obtain information on the facts;

b. In 1992, the Special Prosecutor for Crime Prevention, Ombudsman and Human Rights reported that "there is no complaint in this regard, [as well as both persons, one of them Santiago Antezana Cueto,] have not been intervened by personnel from this Headquarters [...] since there are no files from that time since they were set on fire during the subversive attack that took place in 1989", and it was decided to initiate a new investigation. There is no record that said investigation was initiated (*suprapara.* 122); c.

Nine years later, in 2001, Mrs. Rosa Carcausto Paco ratified her complaint before the National Prosecutor's Office for the arrest and disappearance of Santiago Antezana Cueto. Likewise, on November 25, 2004, she filed a criminal complaint with the Acobamba Mixed Provincial Prosecutor's Office against the Army Captain nicknamed "scorpion", belonging to the Acobamba Military Headquarters and others responsible for the disappearance of Santiago Antezana Cueto (*suprapara.* 123); d.

It was in 2005 that the Acobamba Mixed Provincial Prosecutor's Office issued a resolution in order to carry out procedures to identify those responsible for what happened (*suprapara.* 124), and in 2009 the Provincial Supraprovincial Criminal Prosecutor of Huancavelica formalized a criminal complaint against José Antonio Esquivel Mora, Army Captain of the Acobamba Barracks, as the perpetrator of the crime against humanity in the form of forced disappearance to the detriment of Santiago Antezana Cueto (*supra* para. 124), and

and. The file before the Court does not show that the investigation was carried out against another possible person responsible for the disappearance of Santiago Antezana Cueto, particularly, no immediate perpetrator, according to the judgment of December 12, 2013.

199. In this regard, these omissions are of such importance for the investigation of the legal truth since they are normally suitable, and in any case irreplaceable, to clarify the fate of the victim and identify those responsible for their disappearance.<sup>285</sup>, that "the omission in its implementation was contrary to objective guidelines", and such omission can still be classified as "manifestly unreasonable"<sup>286</sup>. In addition, when analyzing these procedures, it must be taken into account that at the time of the events, as previously identified, there was a practice of forced disappearances of persons (*supra* para. 49 and 50), which in turn was a method used in the counter-subversive fight, which was favored by the generalized situation of impunity due to the absence of judicial guarantees and ineffectiveness of judicial institutions to deal with systematic violations of human rights.

200. The disappearances of the five alleged victims were framed in this context.

201. Based on the foregoing, the Court considers that the State did not comply with its obligation to initiate ex officio and carry out with due diligence the investigations into the forced disappearance of Santiago Antezana Cueto, Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello.

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<sup>285</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background, supra, para. 174*, and *Case of Munárriz Escobar et al. Peru, supra, para. 97*.

<sup>286</sup> Cf. *Case of Castillo González et al. v. Venezuela. Background. Judgment of November 27, 2012. Series C No. 256, para. 153*, and *Case of Tenorio Roca et al. v. Peru, supra, para. 182*.

### ***B.3. Lack of diligence in relation to the search for the whereabouts of the five alleged victims***

202. The Court has established that in cases of presumed forced disappearance, prompt and immediate action by the prosecutors and judicial authorities is essential, ordering timely and necessary measures aimed at determining the whereabouts of the victim or the place where they may be deprived of liberty.

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203. In order for an investigation into an alleged enforced disappearance to be carried out effectively and with due diligence, the authorities in charge must use all necessary means to promptly carry out those essential and timely actions and inquiries to clarify the fate of the victims.<sup>288</sup> On multiple occasions, this Court has ruled on the obligation of States to carry out a serious search, through the appropriate judicial or administrative channels, in which all efforts are made, systematically and rigorously, with adequate and suitable human, technical, and scientific resources to find the whereabouts of the disappeared persons.<sup>289</sup> Receiving the body of a disappeared person is of the utmost importance for their relatives, since it allows them to bury it according to their beliefs, as well as closing the mourning process that they have been experiencing throughout these years. In addition, 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>290</sup>

204. The Court notes that, according to the information available in the case file, the work aimed at determining the whereabouts of each of the alleged victims in this case has been headed mainly by the Prosecutor's Office, particularly, consisting of requests for information to different state institutions, such as the National Superintendence of Migrations, the National Penitentiary Institute, the National Police of Peru (DINCOTE) and other local police stations. These procedures were carried out sporadically between 1992 and 2016, and in many cases they were repeated, in the sense that the information requested had already been obtained in previous years.

205. Given the foregoing, this Court deems that the requests for information made by the Prosecutor's Offices, corresponding to other state institutions in relation to the whereabouts of the five disappeared persons in the present case, do not constitute sufficient means to satisfy the international obligation of the States to determine the whereabouts of the presumed disappeared victims. It is the responsibility of the State to adopt all the necessary measures so that the investigation is efficient and fulfills its purpose of finding the whereabouts of the disappeared person or their remains.

206. Consequently, the Court considers that the State violated its treaty obligations regarding the failure to determine the whereabouts of the five victims in this case.

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<sup>287</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 134, and *Case of Vásquez Durand et al. v. Ecuador*, *supra*, para.

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<sup>288</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *supra*, para. 174, and *Case of Munárriz Escobar et al. Peru*, *supra*, para. 97. See also article 1 of the Inter-American Convention on the Forced Disappearance of Persons, and article 12 of the International Convention for the Protection of all Persons against Forced Disappearances.

<sup>289</sup> See, *inter alia*, *Case of Gudiel Álvarez et al. (Military Newspaper) v. Guatemala*, *supra*, para. 334; *Case of García and Family Vs. Guatemala. Reparations and Costs Fund*, Judgment of November 29, 2012 Series C No. 258, para. 200, and *Case of Osorio Rivera and Family v. Peru*, *supra*, para. 251, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 104.

<sup>290</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 Munárriz Escobar et al. v. Peru*, *supra*, para. 104.



#### ***B.4. Failure to investigate the acts of torture to the detriment of Santiago Antezana Cueto***

207. The Court emphasizes that two cases arise from the Inter-American Convention against Torture that trigger the State's duty to investigate: on the one hand, when a complaint is filed and, on the other, when there is well-founded reason to believe that an act of torture has been committed within the jurisdiction of the State. In these situations, the decision to initiate and advance an investigation does not fall on the State, that is, it is not a discretionary power. On the contrary, the duty to investigate constitutes an imperative state obligation that derives from international law and cannot be ruled out or conditioned by acts or internal regulatory provisions of any kind.<sup>291</sup> It should be added that even when the acts of torture or cruel, inhuman or degrading treatment have not been reported to the competent authorities by the victim herself, in any case in which there are indications of their occurrence, the State must immediately and ex officio initiate an impartial, independent and thorough investigation to determine the nature and origin of the injuries reported, identify those responsible and initiate prosecution.<sup>292</sup>

208. The State is aware of the torture suffered by Santiago Antezana Cueto since 1986, the date on which said act was pointed out by Máximo Antezana Espeza, who was his uncle and, in turn, was detained with him at the time of the events and was an eyewitness of what happened.<sup>293</sup>(*suprapara*. 118).

209. Based on the information available, the Court notes that the State was obliged to immediately initiate an investigation into the acts of torture suffered by Santiago Antezana Cueto, firstly, because of what was stated by Máximo Antezana Espeza in his "request for guarantees" on his behalf and that of his family, and secondly, because the existing elements show that there was a well-founded reason to initiate it. Despite the fact that the State has recently reported on the initiation of an investigation in this regard, prior to that, the file does not show that the State has carried out any investigation into acts of torture.

210. Consequently, the Court finds that the State failed to comply with its obligation to investigate the acts of torture in violation of the judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the Convention, and Articles 1, 6, and 8 of the CIPST, to the detriment of Santiago Antezana Cueto.

#### ***B.5. Lack of execution of the conviction handed down against one of those responsible for the forced disappearance of Santiago Antezana Cueto***

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<sup>291</sup> Cf. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 81; *Case of the Miguel Castro Castro Prison*, *supra*, para. 347, and *Case of Members of the Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 328. Series C No. 218, para. 240.

<sup>292</sup> Cf. *Case of Gutiérrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132. para. 54, and *Case of Vélez Loo vs. Panama. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of November 23, 2010; Series C No. 218, para. 240.

<sup>293</sup> In a request made on September 24, 1986, before the Director of the Human Rights Office of the Public Ministry, in which he requested that he and his family be granted protection to live in peace in La Merced. In that act he stated that he was detained for several days along with his nephew Santiago Antezana Cueto at the Acobamba Military Base, where both were tortured. *cf.* Communication from the petitioners of January 19, 2005. Request for guarantees submitted by Mr. Máximo Antezana Espeza to the Director of the Human Rights Office of the Public Ministry on September 24, 1986 (evidence file, annex 48 to the Merits Report, fs. 417 to 418).

211. The obligation to investigate covers the identification, prosecution, trial and, where appropriate, the punishment of those responsible, as well as compliance with the eventual sentence, in the terms in which it is decreed.<sup>294</sup>.

212. The Court notes that December 13, 2013 was the first time that the State ordered the arrest of José Antonio Esquivel Mora for the forced disappearance of Santiago Antezana Cueto, in compliance with the conviction set on that occasion (*suprapara*. 126). Subsequently, the only actions that appear in the file that have been carried out to proceed to execute said arrest warrants were carried out between 2015 and 2016, namely, 1) the renewal of the arrest warrants for the aforementioned sentenced person, and 2) the issuance of official letters ordering his location and arrest addressed to the Judicial Police Inquiry Division, the Lima District Inquiry Office and the Office's Executive Directorate. INTERPOL-Lima National Center (*suprapara*. 127). The Court considers that the indicated actions are insufficient to consider that the State has tried to diligently comply with the conviction handed down against José Antonio Esquivel Mora. On the contrary, the Court emphasizes that a request made by Rosa Carcausto Paco for a search of a certain property where the convicted person was allegedly located was rejected, given that he did not have the power to request it at the stage of Execution of Judgment (*suprapara*. 127).

213. The lack of execution of the aforementioned Judgment also has a negative effect on the right to reparation of the next of kin of Santiago Antezana Cueto. The compensation of a civil nature agreed in said judgment has not been paid in favor of the victim's next of kin (*suprapara*. 126). Despite the recognition of the compensation in favor of the next of kin of Santiago Antezana Cueto, said reparation is denied to them due to the lack of execution thereof.

214. In accordance with the foregoing, the Court considers that the State is also failing to comply with its obligation to execute the conviction handed down against one of those responsible for the forced disappearance of Santiago Antezana Cueto with due diligence.

### ***B.6. Violation of the right to know the truth***

215. The Court reiterates that all persons, including the next of kin of the victims of serious human rights violations, have in accordance with Articles 1.1, 8.1, 25, as well as in certain circumstances Article 13 of the American Convention<sup>295</sup>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>296</sup> Although the right to know the truth has been fundamentally framed within the right of access to justice<sup>297</sup>, the truth is that this right to the truth has autonomy since it has a broad nature and its violation can affect different rights contained in the American Convention, depending on the context and particular circumstances of the case.<sup>298</sup>.

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<sup>294</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia*, *supra*, para. 165, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia*, *supra*, para. 460.

<sup>295</sup> Cf. *Case of Gelman v. Uruguay. Background and Repairs*. Judgment of February 24, 2011 Series C No. 221, para. 243, and *Case of Herzog et al. v. Brazil*, *supra*, para. 328.

<sup>296</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 Herzog et al. v. Brazil*, *supra*, para. 328.

<sup>297</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Background*, *supra*, para. 181, and *Mun casetorriz Escobar et al. v. Peru*, *supra*, para. 109.

<sup>298</sup> Cf. *Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 220, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 109.

On the other hand, the Court has noted the relevance of the right to the truth regarding forced disappearances<sup>299</sup>. In addition, although it has been noted that the right to the truth implies the right of the victim's next of kin to know the fate of this<sup>300</sup>, the right also covers other aspects, insofar as it is related, in general, to the right of such next of kin for the State to carry out the actions leading to achieving "clarification of the violating facts and the corresponding responsibilities."<sup>301</sup>

216. With regard to the forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto, between 26 and 34 years have elapsed since the events occurred, without fully clarifying what happened to each of the victims in this case, in addition to the fact that it has not been possible to identify, prosecute and, if applicable, punish to those responsible for the commission of the acts that materialized the forced disappearance of said victims. In the case of Santiago Antezana, although there is a ruling that determines that he was the victim of a forced disappearance, said ruling is not enough to provide the next of kin with information about his whereabouts and, if applicable, the location of his remains. In all other cases, Although investigations have been carried out by the state authorities, it is noted that they have not been able to clarify the facts and identify the possible perpetrators. There is also no evidence that additional steps have been taken to determine the whereabouts of each of the victims. Consequently, the Court finds that the State violated the right to know the truth, to the detriment of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina, and Santiago Antezana Cueto, because their whereabouts are unknown. There is also no evidence that additional steps have been taken to determine the whereabouts of each of the victims. Consequently, the Court finds that the State violated the right to know the truth, to the detriment of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina, and Santiago Antezana Cueto, because their whereabouts are unknown. There is also no evidence that additional steps have been taken to determine the whereabouts of each of the victims. Consequently, the Court finds that the State violated the right to know the truth, to the detriment of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina, and Santiago Antezana Cueto, because their whereabouts are unknown.

### ***B.7. Other allegations related to various obstacles related to the investigation***

217. On the other hand, regarding the duty to adopt provisions of domestic law, both the **Commission** Like the **representatives** They argued that Peru fails to comply with its obligation set forth in Article 2 of the Convention, since it has not modified the criminal offense of forced disappearance provided for in Article 320 of the Penal Code, despite the fact that in previous Judgments of the Inter-American Court it had been considered that it was contrary to the international obligations of the State. The representatives also indicated that the approval of Plenary Agreement No. 9-2009/CJ-116 of the Supreme Court of Justice of November 13, 2009 "aggravates the problems caused by the incompatibility of the criminal offense of forced disappearance with international standards." He **State** For its part, it indicated that it modified article 320 of the Criminal Code by means of a law published on January 10, 2017 in the Official Gazette, and that the new classification is in accordance with the applicable international human rights law. In addition, he pointed out that the aforementioned Plenary Agreement No. 9-2009 / CJ-116 was not applied to any of the specific cases.

218. Regarding the incompatibility of the crime of forced disappearance provided for in article 320<sup>302</sup> of the Penal Code of Peru with the norms of the American Convention and the

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<sup>299</sup> *cf., inter alia, Case of the Rural Community of Santa Bárbara v. Peru, supra, para. 176; Case of Goiburú et al. v. Paraguay, supra, para. 84, and Case of Vereda La Esperanza v. Colombia, supra, para. 149.*

<sup>300</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Background, supra, para. 181, and Mun caseto Rodríguez Escobar et al. Vs. Peru, supra, para. 104.*

<sup>301</sup> *Cf. Case of Gómez Palomino v. Peru, supra, para. 80, and Case of Chitay Nech et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 212.*

<sup>302</sup> The article in question provides the following: "Proven disappearance. Article 320.- The official or public servant who deprives a person of his freedom, ordering or executing actions that result in

Inter-American Convention on Forced Disappearance of Persons, the Court notes that in the case *Gomez Palomino*<sup>303</sup> determined that the criminal offense enshrined in said law "does not allow the State to fully comply with its international obligations." Regarding the compatibility of Plenary Agreement No. 9-2009/CJ-116 of the Supreme Court of Justice of the Republic of Peru of November 13, 2009<sup>304</sup> with said norms of international human rights law, in the stage of supervision of compliance of the case *Gomez Palomino*, this Court similarly also established that said agreement does not satisfy the obligation to reform domestic criminal law<sup>305</sup>.

219. The Court notes that neither the representatives nor the Commission specified whether the aforementioned classification as a criminal offense or the aforementioned Agreement of the Supreme Court of Justice had any impact on the investigations carried out for the disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello and Néstor Rojas Medina, or on the investigation and judicial process carried out for the forced disappearance of Santiago Antezana Cueto. On the contrary, the allegations raised in this regard were presented in a generic manner. Therefore, in the present case, it is not for the Court to issue a pronouncement or carry out an analysis on the conformity with the American Convention of the aforementioned norms,<sup>306</sup>

### **B.8. Conclusion**

1 of said Convention, and Article Ib) of the CIDFP, to the detriment of Wilfredo Terrones Silva and his family member: Guillermina Frida Landázuri Gómez (wife); of Teresa Díaz Aparicio and her relatives: Graciela Aparicio Pastor (mother) and Federico Díaz Aparicio (brother), both deceased; of Santiago Antezana Cueto and his relatives: Rosa Carcausto Paco (cohabitant); Ermilio Antezana Cueto (brother) and Ofelia Antezana Torre (cousin); of Néstor Rojas Medina and his relatives: Marcelina Medina Negrón (mother) and Tania Collantes Medina (sister), and of Cory Clodolia Tenicela Tello: Amadea Felipa Tello de Tenicela (mother). Graciela Aparicio Pastor (mother) and Federico Díaz Aparicio (brother), both deceased; of Santiago Antezana Cueto and his relatives: Rosa Carcausto Paco (cohabitant); Ermilio Antezana Cueto (brother) and Ofelia Antezana Torre (cousin); of Néstor Rojas Medina and his relatives: Marcelina Medina Negrón (mother) and Tania Collantes Medina (sister), and of Cory Clodolia Tenicela Tello: Amadea Felipa Tello de Tenicela (mother). Graciela Aparicio Pastor (mother) and Federico Díaz Aparicio (brother), both deceased; of Santiago Antezana Cueto and his relatives: Rosa Carcausto Paco (cohabitant); Ermilio Antezana Cueto (brother) and Ofelia Antezana Torre (cousin); of Néstor Rojas Medina and his relatives: Marcelina Medina Negrón (mother) and Tania Collantes Medina (sister), and of Cory Clodolia Tenicela Tello: Amadea Felipa Tello de Tenicela (mother).

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su desaparición debidamente comprobada, será reprimido con pena privativa de libertad no menor de quince años e inhabilitación, conforme al Artículo 36 incisos 1) y 2)".

<sup>303</sup> *Caso Gómez Palomino Vs. Perú*, *supra*, párr. 108.

<sup>304</sup> En la Sentencia del caso *Tenorio Roca*, la Corte valoró el acuerdo e indicó que "la pretensión de dicho Plenary Agreement according to which "despite the fact that the state of disappearance of the victim subsists at the time the law that criminalized the forced disappearance of persons enters into force, since it is a special crime of its own - it can only be committed by officials or public servants - it is essential that such civil servant condition be present when the criminal law enters into force", generates impunity gaps with respect to events that occurred before the date on which the crime of forced disappearance was incorporated into Peruvian law, because it is essential, according to the same, that for this date the accused subject retains his status as a public official ". *Cf. Case of Tenorio Roca et al. v. Peru*, *supra*, para. 227.

<sup>305</sup> *Cf. Case of Gómez Palomino v. Peru. Supervision of Compliance with Judgment*. Resolution issued by the Inter-American Court on July 5, 2011, Considering clause 36.

<sup>306</sup> *Cf. Case of Gangaram Panday v. Suriname. Merits, Reparations and Costs*. Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 112.

221. In addition, the Court considers that the State is responsible for the violation of the judicial guarantees and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the Convention, as well as Articles 1, 6, and 8 of the CIPST, to the detriment of Rosa Carcausto Paco, Ermilio Antezana Cueto, and Ofelia Antezana Torre, for the failure to investigate the alleged acts of torture that would have been known to the State since 1986.

222. Finally, the Court considers that the State is responsible for the violation of the right to know the truth, to the detriment of the next of kin of Wilfredo Terrones Silva: Guillermina Frida Landázuri Gómez; of Teresa Díaz Aparicio: Graciela Aparicio Pastor and Federico Díaz Aparicio, both deceased; from Néstor Rojas Medina: Marcelina Medina Negrón and Tania Collantes Medina; of Cory Clodolia Tenicela Tello: Amadea Felipa Tello de Tenicela and of Santiago Antezana Cueto: Rosa Carcausto Paco, Ermilio Antezana Cueto and Ofelia Antezana Torre, since their whereabouts are unknown to date.

**VIII.3.**  
**PERSONAL INTEGRITY RIGHT**  
**(Article 5.1, in relation to 1.1 of the American Convention),**  
**to the detriment of the families of the disappeared persons**

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

223. The **Commission** considered that the State has the obligation to guarantee the right to personal integrity of the next of kin, also through effective investigations to find the whereabouts of their loved one and identify and punish those responsible. He affirmed that the absence of effective remedies causes additional suffering and anguish for the victims and their next of kin, due to the nature of the facts of the case, the situation of impunity, and the necessary effects on the victims' family nucleus. It argued that the State violated the right to personal integrity enshrined in Article 5(1) of the American Convention, in relation to the obligations established in Article 1(1) of the same instrument, to the detriment of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto,

224. The **representatives** stated that no evidence is needed to demonstrate the serious effects on the mental and emotional integrity of the next of kin of the alleged victims, since it is a direct consequence of the phenomenon of forced disappearance. In particular, they claimed:

- to. regarding Wilfredo Terrones Silva, who despite having carried out different Efforts to find out his whereabouts have not had the expected result. They concluded that the State violated the right to mental and moral integrity of his next of kin as a direct result of his disappearance, of the uncertainty that they have experienced and continue to experience regarding what happened to the alleged victim;
- b. regarding Teresa Díaz Aparicio, that Graciela Aparicio Pastor and Federico Díaz Aparicio, mother and brother of the victim, took the respective actions in response to her presumed disappearance. They noted that her whereabouts remain unknown to date. They affirmed that the violation of the right to mental and moral integrity of his next of kin is a direct result of the forced disappearance that he would have suffered, and the uncertainty and impunity that comes with 25 years without receiving a response from the State; c.
- regarding Cory Clodolia Tenicela Tello, that her direct relatives were the most affected by her absence, specifically they pointed out her mother Amadea

Tello Barrera and his sister, Norma Tenicela Tello, who began their search from the day of his disappearance, without results. They also made reference to his older brother, Zenobio Washington Tenicela Tello, and his niece, Yorka Silvia Jara Tenicela, all of whom affirmed that the representatives continue to feel the pain of the loss of their loved one;

d. as for Néstor Rojas Medina, that his mother Marcelina Medina Negrón took the respective actions in response to the arrest of her son. They argued that she has maintained an attitude of constant struggle to find out his whereabouts and obtain the sanction of those responsible for his disappearance, which has not had the expected result. They affirmed that the violation of the right to mental and moral integrity of their next of kin is a direct result of their forced disappearance, of the uncertainty they have experienced and are experiencing regarding what happened to them, and

and. regarding Santiago Antezana Cueto, that the State violated the mental and moral integrity of Rosa Carcausto Paco, Ermilio Antezana Cueto, Ofelia Antezana Torre and Máximo Antezana Espeza, to the extent that the forced disappearance of Santiago Antezana Cueto caused them serious suffering that was intensified by the State's refusal to investigate the facts and punish those responsible. They highlighted that Rosa Carcausto Paco had marriage plans with Santiago Antezana Cueto, and the life project of starting a family was cut short with his disappearance, and to date she is single, having dedicated her life to the search for justice. At the same time, they pointed out that the victim's cousin, Ofelia Antezana Torre, has suffered from her disappearance, having been involved from the beginning in the search for justice.

225. HeState alleged that in the case of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, it is probable that the affectation they suffer is similar to that of the next of kin of victims of forced disappearance, something that does not exist in the present case. He argued that since the international responsibility of the State for the alleged enforced disappearance had not been proven, Peru would not be under an obligation under international law to make reparations. As regards the next of kin of Santiago Antezana Cueto, the State considered that they have already been compensated both by the issuance of a sentence that punishes the person responsible for the forced disappearance, and by financial compensation.

## B. Considerations of the Court

226. This Court has considered that, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to mental and moral integrity of the victim's next of kin 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. These damages lead to the presumption of damage to the mental and moral integrity of the next of kin. In previous cases, the Court has established that said presumption is established *juris tantum* regarding mothers and fathers, daughters and sons, spouses, partners and permanent partners, brothers and sisters whenever it corresponds to the particular circumstances of the case<sup>307</sup>.

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<sup>307</sup> Cf. *Case of Blake v. Guatemala. Merits, Reparations and Costs*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Vereda La Esperanza v. Colombia*, *supra*, para. 249; *Case of Vásquez Durand et al. v. Ecuador*, *supra*, para. 182, and *Case of Munárriz et al. v. Peru*, *supra*, para. 114.

227. Regarding the next of kin of Santiago Antezana Cueto, the Court takes into account the expert opinions carried out by Yovana Pérez Clara on his next of kin<sup>308</sup>, said expert referred to the psychological effects caused by their forced disappearance, in Rosa Carcausto Paco and Ermilio Antezana Cueto.

228. Regarding Ofelia Antezana Torre, as she is a cousin and not a direct relative of Mr. Santiago Antezana Cueto, the presumption does not apply *iuris tantum* about the violation of personal integrity. In reason of which its affectation must be proven. In this regard, the Commission has not alleged specific damages suffered by it. The representatives alleged that she "has suffered from the disappearance, having been involved from the beginning in the search for justice." In this sense, it is verified that in her statement rendered by means of affidavit she stated<sup>309</sup>:

For years we have promoted the search for our relatives and also those of other people. Together we joined forces to denounce the disappearances and demand that our complaints be investigated. I neglected my family a lot, my husband and children to find justice, I was outraged by everything that happened. I feel that this has inadvertently affected my children and I have transmitted my grief and nervousness to them. I was very sad and as they say "I carried my ordeal inside" in front of most people, but in front of my children I cried. I imagined what my father, my cousin and my uncle had suffered inside the Barracks and it affected me a lot. I was also very affected by being accused of being a terrorist for seeking justice, they persecuted me and it is horrible that they accuse you of something like that, I lived in fear and thought that at some point they were going to arrest me or disappear,

229. Likewise, in the expert opinion rendered by Yovana Pérez Clara<sup>310</sup> it is indicated that "in the months and years after the occurrence of the violent event, the interviewee experienced a series of sufferings of an anxious-depressive nature that ranged in intensity between moderate and severe levels. She highlighted the depressed mood, the nightmares and nocturnal enuresis, the resentment and, above all, the absolute abandonment of the immediate family bond to search for her absent relatives. With the passage of time these conditions became more tolerable. Given the foregoing, this Court considers that Mrs. Antezana Torre has suffered effects on her personal integrity, as indicated by the expert witness.

230. Likewise, the Commission and the representatives argued that Máximo Antezana Espeza, Santiago Antezana Cueto's uncle, had a close relationship with him, precisely because when he was arrested it was because he came out in defense of his uncle. However, they have not alleged specific effects in this regard. As long as the presumption does not apply to him *iuris tantum* Regarding the violation of personal integrity, the Court considers that in the present case the alleged violation of Article 5 of the American Convention was not proven.

231. In relation to the next of kin of Wilfredo Terrones Silva and Cory Clodolia Tenicela Tello, it is appropriate to apply the presumption *iuris tantum* on the violation of personal integrity with respect to their relatives. In the case of Mr. Terrones Silva, it applies to his wife Guillermina Frida Landazuri de Terrones. Likewise, in the case of Mrs. Tenicela Tello, said presumption also applies to her mother, Amadea Tello Barrera, her sister, Norma Tenicela Tello, and her brother, Zenobio Washington Tenicela Tello. On the contrary, with respect to her niece, Yorka Silvia Jara Tenicela, the Court notes that it does not appear in the

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<sup>308</sup> *cf.* Psychological expert opinion rendered by Yovana Pérez Clara through *affidavit* before the Court on March 2, 2018 (merits file, fs. 879 to 886).

<sup>309</sup> *cf.* Statement rendered by Ofelia Antezana Torre through *affidavit* before the Court on February 27, 2018 (merits file, fs. 831 to 838).

<sup>310</sup> *cf.* Psychological expert opinion rendered by Yovana Pérez Clara through *affidavit* before the Court on March 9, 2018 (merits file, fs. 902 to 915).

file evidence of the alleged suffering caused by the disappearance of his aunt. As she is not a direct relative of the disappeared victim, it is necessary to demonstrate the suffering caused by her forced disappearance. Therefore, the Court does not consider proven the violation of the right to personal integrity to her detriment.

232. Regarding the next of kin of Teresa Díaz Aparicio, the Court notes that it is appropriate apply also the presumption *iuris tantum* so much for his mother Graciela Aparicio Pastor, as well as her brothers Roberto Levi Aparicio and Federico Díaz Aparicio, for the suffering caused by the forced disappearance of their relative<sup>311</sup>.

233. Regarding Néstor Rojas Medina, the Court notes that it is appropriate to apply the presumption *iuris tantum* for his mother Marcelina Medina Negrón and his sister Tania Collantes Medina on the violation of personal integrity for being direct relatives of a victim of forced disappearance. The suffering of these persons is confirmed by the expert opinions of Carlos Jibaja Zarate and Carmen Wurst de Landázuri, in which reference is made to the psychological effects caused by the forced disappearance of Néstor Rojas Medina.

2. 3. 4. Based on the above considerations, this Tribunal concludes that Peru violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Rosa Carcausto Paco, Ermilio Antezana Cueto, Ofelia Antezana Torre, Guillermina Frida Landázuri de Terrones, Graciela Aparicio Pastor, Roberto Levi Aparicio and Federico Díaz Aparicio, Amadea Felipa Tello de Ten icela, Norma Tenicela Tello, Zenobio Washington Tenicela Tello, Marcelina Medina Negrón, and Tania Collantes Medina.

## IX

### REPAIRS

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

235. Based on the provisions of Article 63(1) of the Convention, 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 rule that constitutes one of the fundamental principles of contemporary International Law on the responsibility of a State."<sup>312</sup>

236. 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>313</sup> Therefore, the Court has considered the need to grant various measures of reparation, 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 especially relevant for the damages caused.<sup>314</sup>

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<sup>311</sup> The Court notes that the next of kin of Teresa Díaz Aparicio died years after her disappearance forced. In the case of his mother Graciela Pastor Aparicio died on November 5, 1997, his brothers Roberto Levi Aparicio and Federico Díaz Aparicio, on October 21, 2001 and April 12, 2014, respectively.

<sup>312</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 143.

<sup>313</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, para. 26, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala, supra*, para. 144.

<sup>314</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 Coc Max et al. (Massacre of Xamán) v. Guatemala, supra*, para. 144.



237. 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.<sup>315</sup>

238. International jurisprudence, and in particular that of the Court, has repeatedly established that the sentence constitutes by itself a form of reparation<sup>316</sup>. However, considering the circumstances of this case, in accordance with the considerations set forth on the merits and the violations of the Convention declared in this Judgment, the Court will proceed to analyze the claims presented by the Commission and the representatives of the victims, 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 damages caused.<sup>317</sup>

### A. Injured Party

239. The Court reiterates that the injured party, in the terms of Article 63(1) of the American Convention, is considered to be a person who has been declared a victim of the violation of any right recognized therein. Therefore, this Court considers Wilfredo Terrones Silva and his family member: Guillermina Frida Landázuri Gómez as the injured party; Teresa Díaz Aparicio and her relatives: Graciela Aparicio Pastor (deceased), Federico Díaz Aparicio (deceased) and Roberto Levi Aparicio (deceased); Cory Clodolia Tenicela Tello and his relatives: Amadea Felipa Tello de Tenicela, Norma Tenicela Tello and Zenobio Washington Tenicela Tello; to Néstor Rojas Medina and his relatives: Marcelina Medina Negrón and Tania Collantes Medina, and to Santiago Antezana Cueto and his relatives: Rosa Carcausto Paco, Ermilio Antezana Cueto and Ofelia Antezana Torre.

### B. Obligation to investigate

240. The **Commission** requested that the State be ordered to carry out the corresponding proceedings for the crime of forced disappearance, to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, and of forced disappearance and torture, in the case of Santiago Antezana, impartially, effectively and within a reasonable time, to fully clarify the facts, identify all those responsible and impose the corresponding sanctions. It also requested "to fully, impartially, and effectively investigate the whereabouts of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina, and Cory Clodolia Tenicela Tello." It added that the State must adopt the necessary measures, if applicable, to identify and deliver their mortal remains to the next of kin.

241. The **representatives** They reiterated the Commission's request and also requested that compliance with the judicial rulings be guaranteed at the domestic level. In addition, they requested that the State be ordered to ensure that the organs of the justice system involved in the case have the necessary human and material resources to perform their tasks adequately, independently, and impartially.

242. The **State** argued that there are currently investigations into the five cases,

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<sup>315</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 144.

<sup>316</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala, supra*, para. 145.

<sup>317</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 and 26, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala, supra*, para. 145.

with different results in terms of investigation, prosecution and punishment of those responsible for human rights violations. He reiterated his will and intention to continue with due speed the criminal investigation that has been carried out at the national headquarters (regarding the criminal proceedings that have not been concluded). It concluded that "by means of the ongoing investigations and with the implementation of Law No. 30470 called 'Law for the Search for Disappeared Persons during the period of violence 1980-2000,' it is hoped that this recommendation can be met."

243. The Court stated in this Judgment, *inter alia*, that the investigations carried out were not diligent or effective, nor did the State respect the guarantee of a reasonable period of time, to establish what happened, identify, prosecute and, where appropriate, punish those responsible for the events that occurred to Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, Cory Clodolia Tenicela Tello and Santiago Antezana Cueto, nor to determine their whereabouts.

244. Bearing in mind that the criminal proceedings are currently open, the purpose of which is to investigate the facts related to the forced disappearances of Wilfredo Terrones Silva, Teresa Aparicio Díaz, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, the Court orders that the State must continue with the investigations that are necessary to identify, prosecute and, where appropriate, punish those responsible for the forced disappearances of the aforementioned persons. Said obligation must be fulfilled in accordance with the standards established by the jurisprudence of this Court.<sup>318</sup> and within a reasonable time.

245. With regard to the investigation and criminal proceedings carried out for the forced disappearance suffered by Santiago Antezana Cueto, the Court reiterates that although a conviction was handed down against José Antonio Esquivel Mora for the crime of forced disappearance on December 12, 2013, the execution is still pending, given that the person responsible is currently a fugitive from justice. Regarding the execution of said judgment, the Court orders the State to adopt the necessary measures with due diligence to comply with said judgment. Added to this, given that the Court also determined the violation of Articles 8.1 and 25.1 of the Convention for: 1) the lack of a diligent investigation of other possible perpetrators of the forced disappearance of Santiago Antezana,

246. 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>319</sup>

247. On the other hand, the whereabouts of Santiago Antezana Cueto, Wilfredo

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<sup>318</sup> Cf. *Case of Human Rights Defender et al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*, Judgment of August 28, 2014. Series C No. 283, para. 252; *Case of Pacheco León et al. v. Honduras. Merits, Reparations and Costs*, Judgment of November 15, 2017. Series C No. 342, para. 194, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 122.

<sup>319</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*, Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Tenorio Roca et al. v. Peru, supra*, para. 269, and *Case of Munárriz Escobar et al. v. Peru, supra*, para. 124.

Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, and to date the State has not carried out all the measures to determine their whereabouts. 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 each one of them, which must be carried out systematically and rigorously, with adequate and suitable human, technical, and scientific resources. The aforementioned proceedings should be reported to their relatives and, if possible, seek their presence.

248. In the event that, after the procedures carried out by the State, the victims are found dead, the mortal remains must be delivered to their next of kin, after verifying their 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>320</sup>

### C. Rehabilitation measures

249. The **Commission** requested "the implementation of an adequate care program for the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Santiago Antezana Cueto, Néstor Rojas Medina and Cory Clodolia Tenicela, in consultation with them and in accordance with their specific needs."

250. The **representatives** They requested that the State be ordered to guarantee free and permanent medical and psychological treatment for the next of kin of the victims, given the suffering they suffered due to the alleged forced disappearances of Wilfredo Terrones Silva, Néstor Rojas Medina and Santiago Antezana Cueto. They added that the benefits must be provided by competent professionals, after determining the medical needs of each victim, including the provision of the medications that are required, ensuring the proper participation of the victims in the process. In addition, they requested that the expenses generated jointly with the provision of treatment, such as the cost of transportation, among other needs that may arise, be borne by the State.

251. The **State** It indicated that the representatives have not requested "the aforementioned claim in favor of the next of kin of Mrs. Cory Clodolia Tenicela Tello and Teresa Díaz Aparicio," and that, therefore, "the said claim has been waived." The State added that this measure of satisfaction could eventually be fulfilled in the Comprehensive Health System (SIS), whose purpose is to protect the health of Peruvians who do not have health insurance. It affirmed that since Mrs. Marcelina Medina Negrón and Mr. Leopoldo Rojas Manuyarna, parents of Mr. Néstor Rojas Medina have current registration in the aforementioned Comprehensive Health Insurance, it would not be necessary to order this measure of satisfaction in their favor, if they were considered as victims.

252. On other occasions, the Court has considered it necessary to order a measure of reparation that provides adequate attention to the psychological suffering suffered by the victims of the violations established in the Judgment<sup>321</sup>. Considering the possible psychological impact caused by the forced disappearance of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, Cory Clodolia Tenicela Tello and Santiago Antezana Cueto,

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<sup>320</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*, *supra*, paras. 122-124; *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 276, and *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 125.

<sup>321</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45; *Case of Vereda la Esperanza v. Colombia*, *supra*, para. 278, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*, *supra*, para. 155.

To the detriment of their next of kin, the Court orders the State to provide free of charge, without any charge, the adequate and priority psychological treatment required by Guillermina Frida Landázuri Gómez, Amadea Felipa Tello de Tenicela, Norma Tenicela Tello, Zenobio Washington Tenicela, Marcelina Medina Negrón, Tania Collantes Medina, Rosa Carcausto Paco, Ermilio Antezana Cueto, and Ofelia Antezana Torre, and after expressing her will, which It must be given within a period of six months from the notification of this Judgment, and for the time necessary to address the conditions derived from the violations declared in this Judgment. As long as it is appropriate to what was ordered, the State may grant said treatment through the national health services, including through the Comprehensive Health System (SIS).<sup>322</sup> Regarding the next of kin of Teresa Díaz Aparicio, the representatives reported that all of them are deceased, therefore it is not appropriate to order any rehabilitation measure.

#### D. Satisfaction measures

253. The **Commission** requested that the State adequately and publicly acknowledge the violations declared in that case. The **representatives** They requested the Court to order the State to publish, within a period of six months after the date of notification of the judgment, in the Official Gazette and in a newspaper with national circulation, the sections on context and proven facts, as well as the operative part of the judgment. They also required that the publication also be available on the website *Web* official of the Ministry of Justice and Human Rights, the Public Ministry, the Judiciary, the Armed Forces and the National Police of Peru, "no more than three links from the main page and maintained until the moment the sentence is fully complied with". In addition, they requested that an "act of public apology" be carried out by the highest authorities of the State, dignifying the memory of the victims. They also requested that the State place a plaque in the place of Memory, Tolerance and Social Inclusion with the names of the victims, after consulting with their next of kin, and that a plaque be placed at the Universidad Nacional Mayor de San Marcos in honor of Teresa Díaz Aparicio. He **State** The publication of the judgment on a web portal of a state entity, such as the Ministry of Justice and Human Rights, was considered sufficient. In addition, he requested that the Court not order any public act, nor order the placement of any plaque.

254. The **Court** provides, as it has done in other cases<sup>323</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 an official website. The State must immediately inform this Court once it proceeds to carry out each one of the publications ordered, regardless of the one-year term to present its first report provided in operative paragraph 19 of this Judgment.

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<sup>322</sup> Cf. *Case of Yarce et al. Colombia*, *supra*, para. 340, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*, *supra*, para. 155 to 157.

<sup>323</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 79; *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 288; *Case of Munárriz Escobar et al. v. Peru*, *supra*, para. 132, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*, *supra*, para. 158.

255. On the other hand, as it has done in other cases<sup>324</sup>, the Court deems it necessary, in order to repair the damage caused to Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina, and Santiago Antezana Cueto and their next of kin and to prevent events such as those in this particular case from being repeated, order the State to hold a public act of acknowledgment of international responsibility in relation to the forced disappearance of the victims. Said act must refer to the human rights violations declared in this Judgment to his detriment. Likewise, it must be carried out through a public ceremony in the presence of high-ranking State officials and the next of kin of the victims. The State must agree with the next of kin of 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 the date for its realization. To do so, the State has a period of one year, counted from the notification of this Judgment.<sup>325</sup>

256. On the other hand, with respect to the request that a plaque be placed at the National University of San Marcos in honor of Teresa Díaz Aparicio, given that the international responsibility of the State for her forced disappearance was determined and since it does not have relatives or beneficiaries who can access compensation, this Court considers it pertinent to order the State to place a plaque acknowledging that Teresa Díaz Aparicio was forcibly disappeared by state agents. This plaque must be placed at the National University of San Marcos in Tribute to Teresa Díaz Aparicio. The content of said plate must be previously agreed with their representatives. For the preparation and unveiling of the plate, the State has a period of one year,

#### **E. Other measures requested**

257. The **Commission** requested the Court to order the State to adopt the measures to avoid the repetition of these facts. Specifically, establish the necessary measures to strengthen the institutional capacity to investigate cases of forced disappearance in the context of the internal armed conflict, in order to ensure that they are investigated with due diligence. Likewise, it recommended reforming the criminal legislation so that the classification of the crime of forced disappearance conforms to inter-American standards.

258. The **representatives** They requested, as measures of non-repetition, "to adapt the criminal category of forced disappearance to international standards"; adapt the instruction manuals and the Army's doctrine to international standards referring to the detention and custody of persons during counter-subversive operations, and the implementation in the evaluation and ratification of magistrates, criteria referred to their performance in the management and application of international standards in the investigation of serious human rights violations. Additionally, the representatives requested the regularization of the legal situation of the victims and the implementation of existing legal mechanisms for cases of forced disappearance in the country, as well as the granting of study scholarships to the son of Wilfredo Terrones Silva, but that "according to the decision of the victim's children, it could be transferred to her children, that is, her grandchildren, due to the considerable time that has elapsed since her disappearance." They also asked that the people who participate in the investigations have the proper security guarantees and that, finally, the State sanction the conduct of public servants related to the procedural and investigative irregularities identified.

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<sup>324</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 81; *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 293, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*, *supra*, para. 162.

<sup>325</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*, *supra*, para. 81, and *Case of Coc Max et al. (Massacre of Xamán) v. Guatemala*, *supra*, para. 163.

259. The **State** Regarding the measures of non-repetition, it argued that neither the Commission nor the representatives have supported whether there is a relationship between the presumed criminal responsibility of the presumed perpetrators of the disappearance at the internal level with the wording of the criminal offense. In addition, that the criminal type has been modified on January 7, 2017 by Decree No. 1351, and that it is in force. He added that he has been complying with his international obligations, implementing courses of instruction and education programs in human rights and international humanitarian law within the Armed Forces. Likewise, it indicated that the evaluation in the process of ratification of Judges and Prosecutors includes the review of the performance, quality, conduct and suitability of each one of the magistrates and according to the specialty they belong to. It considered that the requested modification could only materialize for the magistrates who know processes with serious violations of human rights. Finally, the State indicated that the interested parties have the possibility of filing a claim for a declaration of presumed death before the competent authority.

260. On the other hand, the State indicated that if the Court determines its responsibility, it will convene the corresponding sectors and entities, in order to evaluate the possibility that the requested scholarship could be effectively awarded to the son of Mr. Wilfredo Terrones Silva. Regarding the request of the representatives to transfer the aforementioned reparation to the grandchildren of Mr. Terrones Silva, the State considered that reparations of this type are of an individual nature and with respect to the fully identified beneficiaries and, therefore, they could not be transferred to other persons.

261. With regard to the request for non-repetition measures related to adapting the criminal definition of forced disappearance, the Court recalls that it did not consider that there was a violation of Article 2 of the American Convention for said definition in the instant case (*suprapara*. 219), so it is not appropriate to order its modification on this occasion. <sup>326.</sup>

262. Finally, with regard to the other reparation measures requested by the representatives and the Commission indicated in this section, and taking into account the observations presented by the State, 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.

## F. Compensatory indemnities

263. The **Commission** requested "[a]dequate reparation for the human rights violations declared in this report, both materially and morally, including fair compensation."

264. The **representatives** they requested compensation for pecuniary damage and non-pecuniary damage in favor of the next of kin of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Santiago Antezana Cueto. Regarding the pecuniary damage to the detriment of the cohabitant of Santiago Antezana Cueto, it is indicated that as a result of the forced disappearance, Rosa Carcausto Paco was left homeless, since "since the property in which they lived was in the name of Santiago Antezana [Cueto], it became the property of his next of kin after his forced disappearance." They also indicated with respect to the latter that "her partner Rosa Carcausto Paco had to travel to Acobamba to closely follow the disappearance of her cohabitant days after her arrest and, given the refusal to report on her whereabouts

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In this regard, the State reported that said criminal offense was modified in 2017.

at the military base, he traveled to various prisons in the country to look for him.”

265. Regarding the lost earnings of all the victims, the representatives based "the calculation based on the minimum wage in Peru from the year of their disappearance [to March 2017], updating the amounts to the current value."<sup>327</sup> Finally, regarding non-pecuniary damage, they requested the amounts of USD\$50,000.00 (fifty thousand United States dollars) in favor of Guillermina Frida Landázuri Gómez, Wilfredo Terrones Landázuri, Rosa Carcausto Paco, Ermilio Antezana Cueto, Marcelina Medina Negrón and Tania Collantes Medina, and USD\$30,000.00 (thirty thousand United States dollars) in favor of Ofelia Antezana Torre and Máximo Antezana Espeza. They made no express reference to the compensation requested in favor of the next of kin of Cory Clodolia Tenicela Tello. On the other hand, they indicated that the amounts received by Rosa Carcausto Paco and Marcelina Medina Negrón, as they are registered in the Single Registry of Victims, do not tend to repair the life project of the next of kin of the victims, and that said amounts do not comply with international standards. Besides, in relation to Santiago Antezana Cueto and the judicial sentence that grants certain amounts in favor of his relatives for civil liability, they noted that they could not be collected due to the lack of diligence of the judicial authorities. With regard to Teresa Díaz Aparicio, they indicated that since she has no relatives, the other symbolic reparations indicated are ordered.

266. The **State**, in relation to consequential damage, stated that "in the event that payment is determined for the expense of any amount in attention to the steps taken by the next of kin", they must be documented. Regarding the loss of earnings, she indicated that "it is not clear how the economic activity carried out by Mrs. Tenicela Tello or Mr. Antezana Cueto has been determined." He noted that in the recent jurisprudence of the Court, the amounts awarded for non-pecuniary damage are less than USD \$50,000.00 (fifty thousand United States dollars). In the case of the relatives of Santiago Antezana Cuello, he indicated that there was a fixation of payment of civil reparation in the sentence issued by the National Criminal Chamber that sentenced the person responsible for his forced disappearance for a total amount of S.150,000.00 (one hundred and fifty thousand soles), and that the State was not sued as a civilly responsible third party for the payment of said amounts. In addition, it affirmed that relatives of Santiago Antezana Cueto and Néstor Rojas Medina received amounts of compensation for being registered in the Single Registry of Victims.

267. With regard to compensation measures, the Court has developed in its jurisprudence the concept of pecuniary damage and the cases in which it is appropriate to compensate it. This Court has established that pecuniary damage covers the loss or detriment of the income of the victims, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the facts of the case.<sup>328</sup> On the other hand, international jurisprudence has established that the judgment constitutes *per se* form of repair<sup>329</sup>. However, the Court has developed in its jurisprudence the concept of non-pecuniary damage, and has established that it can include both the suffering and affliction caused to the direct victim and those close to her, as well as the impairment of very important values.

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<sup>327</sup> The representatives requested the following amounts for loss of earnings, amount to which he deducted 25% for personal expenses: for Santiago Antezana Cueto the sum of S/119,468.97 soles, equivalent to US\$36,759.68; for Wilfredo Terrones Silva the sum of S/118,667.80 soles, equivalent to US\$36,513.17; for Teresa Díaz Aparicio the sum of S/118,667.80 soles, equivalent to US\$36,513.17; for Néstor Rojas Medina the sum of S/119,354.95 soles, equivalent to US\$36,354.95 and for Cory Clodolia Tenicela Tello the sum of S/118,559.80 soles, equivalent to US\$36,479.94 (evidence file, annex 68 to the ESAP, fs. 4493 to 4498).

<sup>328</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*, Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 177.

<sup>329</sup> Cf. *Case of Neira Alegría et al. v. Peru, supra*, para. 56, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 145.

significant for people, as well as changes, of a non-pecuniary nature, in the living conditions of the victim or his family<sup>330</sup>.

268. In general terms, with regard to pecuniary damage, the Court notes that the representatives did not provide any evidence that would allow them to prove the consequential damage that the victims would have suffered in this case due to the violations that have been declared in this Judgment. However, this Court considers that it must be presumed that, as it has done in previous cases<sup>331</sup>, in consideration of the expenses incurred for its search. Regarding the loss of earnings due to the violations suffered, the Court notes that the arguments of the representatives were raised exclusively in relation to the alleged forced disappearance of the victims. On the other hand, the Court notes that the State, within the framework of the Comprehensive Reparations Plan, has already proceeded to compensate the next of kin of two of the five victims. Taking these elements into account, the Court will proceed to assess the admissibility of ordering the State to pay compensation for pecuniary and non-pecuniary damage.

269. The Court, in consideration of the particularities of the case and for the adequate comprehensive reparation of the victims, notes that, regarding the pecuniary damage of the victims, the representatives made a calculation of the loss of earnings with respect to all the victims, in which they used "as a base the minimum wage in Peru from the year of their disappearance [to March 2017], updating the amounts to the current value." However, they did not take into account all the elements required by the jurisprudence of the Tribunal to carry it out, since the life expectancy of the alleged victims is not taken into account, for which reason the amount requested by the representatives is not appropriate and the pecuniary damage will be calculated according to a reasonable estimate.

270. With regard to the pecuniary damage to the detriment of Wilfredo Terrones Silva, this Court considers that as a result of his forced disappearance he would have suffered a loss of income, therefore, it orders, in equity, the payment of USD\$15,000.00 (fifteen thousand United States dollars) for pecuniary damage. Said amount must be paid to Guillermina Frida Landázuri. On the other hand, with regard to non-pecuniary damage in the present case, this Court, in consideration of the particular circumstances and the violations of the rights to recognition of legal personality, to life, to personal integrity and personal liberty established in Articles 3, 4.1, 5.1 and 5.2, and 7 of the American Convention, in relation to Article Ia) of the Inter-American Convention on Forced Disappearance of Persons,

271. With regard to the next of kin of Mr. Terrones Silva, the Court determined the violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1 and 25.1 of the American Convention due to the affectation of personal integrity, for lack of a diligent investigation and within a reasonable time into the forced disappearance of Wilfredo Terrones Silva and the right to know the truth, as well as the obligations derived from Article Ib) of C IDFP, this Court finds it pertinent to set, in equity, the sum of US\$50,000.00 (fifty thousand United States dollars, for non-pecuniary damage, in favor of Guillermina Frida Landázuri.

272. Regarding the pecuniary damage to the detriment of Cory Clodolia Tenicela Tello, this

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<sup>330</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, *supra*, para. 84, and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*, *supra*, para. 189.

<sup>331</sup> Cf. *Case of Human Rights Defender et al. v. Guatemala*, *supra*, para. 271, and *Case of Yarce et al. v. Colombia*, *supra*, para. 364.



The Court considers that as a result of his forced disappearance he would have suffered a loss of income, therefore, in equity, it orders the payment of USD\$15,000.00 (fifteen thousand United States dollars) for pecuniary damage. Said amount must be paid to Amadea Felipa Tello de Tenicela. On the other hand, with regard to non-pecuniary damage in the present case, this Court, considering the particular circumstances and violations of the rights to recognition of legal personality, life, personal integrity and personal liberty established in Articles 3, 4.1, 5.1 and 5.2, and 7 of the American Convention, in relation to Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Cory Clodolia Tenicela Tello, this Court deems it pertinent to establish ,

in favor of Norma Tenicela Tello. In the case of Zenobio Washington Tenicela Tello, this Court determined the violation of the right to personal integrity established in Article 5.1 of the Convention, for which the Court establishes, in equity, the amount of US\$10,000.00 (ten thousand United States dollars), for non-pecuniary damage, in his favor.

274. With regard to the pecuniary damage to the detriment of Néstor Rojas Medina, this Court considers that as a result of his forced disappearance he would have suffered a loss of income, therefore, it orders, in equity, the payment of USD\$15,000.00 (fifteen thousand United States dollars) for pecuniary damage. Said amount must be paid to Marcelina Medina Negrón and Tania Collantes Medina, in equal parts. On the other hand, with regard to non-pecuniary damage in the present case, this Court, in consideration of the particular circumstances and the violations of the rights to recognition of legal personality, to life, to personal integrity and personal liberty established in Articles 3, 4.1, 5.1 and 5.2, and 7 of the American Convention, in relation to Article I. a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Néstor Rojas Medina, this Court finds it pertinent to establish, in equity, the sum of US\$100,000.00 (one hundred thousand United States dollars), which must be paid to Marcelina Medina Negrón and Tania Collantes Medina, in equal parts. It should be noted that to set the compensation, the Court took into account the fact that the State had already paid Marcelina Medina Negrón the amount of S./5,000 (five thousand soles), as reparation for the "forced disappearance" suffered by Néstor Rojas Medina. which must be paid to Marcelina Medina Negrón and Tania Collantes Medina, in equal parts. It should be noted that to set the compensation, the Court took into account the fact that the State had already paid Marcelina Medina Negrón the amount of S./5,000 (five thousand soles), as reparation for the "forced disappearance" suffered by Néstor Rojas Medina. which must be paid to Marcelina Medina Negrón and Tania Collantes Medina, in equal parts. It should be noted that to set the compensation, the Court took into account the fact that the State had already paid Marcelina Medina Negrón the amount of S./5,000 (five thousand soles), as reparation for the "forced disappearance" suffered by Néstor Rojas Medina.

275. With regard to the next of kin of the victim, the Court determined the violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1 and 25.1 of the American Convention due to the affectation of personal integrity, for lack of a diligent investigation and within a reasonable time into the forced disappearance of Néstor Rojas Medina and the right to know the truth, as well as the obligations derived from Article Ib) of the CIDFP, this Court considers it pertinent to establish, in equity, the sum of US\$50,000.00 (fifty thousand United States dollars), for non-pecuniary damage, in favor of Marcelina Medina Negrón, and the amount of

US\$25,000.00 (twenty-five thousand United States dollars, for non-pecuniary damage, in favor of Tania Collantes Medina.

276. Regarding the pecuniary damage to the detriment of Santiago Antezana Cueto, this Tribunal considers that, as a result of his forced disappearance, he would have suffered a loss of income, for which reason it orders, in equity, the payment of USD\$15,000.00 (fifteen thousand United States dollars) for pecuniary damage. Said amount must be paid to Rosa Carcausto Paco. On the other hand, with regard to non-pecuniary damage in the present case, this Court, considering the particular circumstances and the violations of the rights to recognition of legal personality, to life, to personal integrity and personal liberty established in Articles 3, 4.1, 5.1 and 5.2, and 7 of the American Convention, in relation to Article Ia) of the Inter-American Convention on Forced Disappearance of Persons,

for non-pecuniary damage, in favor of Ermilio Antezana Cueto and the amount of US\$10,000.00 (ten thousand United States dollars), for non-pecuniary damage, in favor of Ofelia Antezana Torre. Given the violations declared in this jurisdiction, for the purposes of determining compensation, the Court considers that the State's arguments that it must take into account the civil reparation established in the judgment of the National Criminal Chamber of September 12, 2013, which is pending execution, are not admissible, since said reparation is of a civil nature that corresponds to the personal responsibility of the convicted person and has no connection with the international responsibility of the State determined in this judgment. in favor of Ermilio Antezana Cueto and the amount of US\$10,000.00 (ten thousand United States dollars), for non-pecuniary damage, in favor of Ofelia Antezana Torre. Given the violations declared in this jurisdiction, for the purposes of determining compensation, the Court considers that the State's arguments that it must take into account the civil reparation established in the judgment of the National Criminal Chamber of September 12, 2013, which is pending execution, are not admissible, since said reparation is of a civil nature that corresponds to the personal responsibility of the convicted person and has no connection with the international responsibility of the State determined in this judgment. in favor of Ermilio Antezana Cueto and the amount of US\$10,000.00 (ten thousand United States dollars), for non-pecuniary damage, in favor of Ofelia Antezana Torre. Given the violations declared in this jurisdiction, for the purposes of determining compensation, the Court considers that the State's arguments that it must take into account the civil reparation established in the judgment of the National Criminal Chamber of September 12, 2013, which is pending execution, are not admissible, since said reparation is of a civil nature that corresponds to the personal responsibility of the convicted person and has no connection with the international responsibility of the State determined in this judgment. for non-pecuniary damage, in favor of Ofelia Antezana Torre. Given the violations declared in this jurisdiction, for the purposes of determining compensation, the Court considers that the State's arguments that it must take into account the civil reparation established in the judgment of the National Criminal Chamber of September 12, 2013, which is pending execution, are not admissible, since said reparation is of a civil nature that corresponds to the personal responsibility of the convicted person and has no connection with the international responsibility of the State determined in this judgment. for non-pecuniary damage, in favor of Ofelia Antezana Torre. Given the violations declared in this jurisdiction, for the purposes of determining compensation, the Court considers that the State's arguments that it must take into account the civil reparation established in the judgment of the National Criminal Chamber of September 12, 2013, which is pending execution, are not admissible, since said reparation is of a civil nature that corresponds to the personal responsibility of the convicted person and has no connection with the international responsibility of the State determined in this judgment.

278. With respect to Teresa Díaz Aparicio, the Court determined that she was the object of a forced disappearance, which constitutes violations of the rights to recognition of legal personality, to life, to personal integrity and liberty, to judicial guarantees and judicial protection established in Articles 3, 4.1, 5.1, 7, 8.1 and 25.1 in relation to Article 1.1 of the American Convention, as well as the obligations contained in Article Ia) of the American Convention. Inter-American Convention on Forced Disappearance of Persons, to his detriment. In addition, the Court determined the violation of the rights to personal integrity, judicial guarantees and judicial protection established in Articles 5.1, 8.1 and 25.1 of the American Convention, due to the affectation of personal integrity, for lack of a diligent investigation and within a reasonable time, as well as the obligations derived from article Ib) of the CIDFP, to the detriment of their next of kin, who have already passed away. The file does not show that there is any other next of kin or beneficiary of any compensation, and taking into account the information from the representatives that all their next of kin are deceased and their request in this regard, the Court will not proceed to

order compensation for material and non-material damage in this case.

#### H. Costs and Expenses

279. The **representatives** They indicated, with respect to the proceedings of Wilfredo Terrones Silva, Teresa Aparicio Díaz and Néstor Rojas Medina, that APRODEH "has not charged legal fees to the family", but that "in the initial phase of the investigations, the family hired the services of lawyers, for which they have not kept the receipts for the expenses incurred", for which they requested that the corresponding amount be calculated fairly. They indicated that "the next of kin attended various proceedings without the advice of a lawyer, in the subsequent investigations and to date, the next of kin of the aforementioned victims have had the legal support of APRODEH, however, they have had to pay a series of expenses, typical of processes at the national and international level." In his closing arguments, They specified that they request that an amount be calculated in equity "for the expenses incurred by APRODEH." They indicated that Rosa Carcausto Paco "like [as] Ofelia Antezana Torre and Ermilio Antezana Cueto, during these "33" years they have had to incur various expenses for the promotion of the investigations and subsequent criminal proceedings that were initiated regarding the disappearance of their relative." They indicated that they did not have receipts for this either, so they requested in equity "the sum of USD\$5,000.00 (five thousand United States dollars) in favor of Rosa Carcausto Paco and USD\$2,000.00 (two thousand United States dollars) in favor of Ermilio Antezana Cueto and Ofelia Antezana Torre." They also noted that after 2004, COMISEDH supported the Antezana family and that it has not charged any type of fees, but they indicated that "it has incurred various expenses typical of judicial processes such as hiring lawyers, transportation expenses, tickets and per diem for lawyers to the city of Ayacucho, among other administrative expenses (telephone, printing, photocopying, among others). Therefore, they requested the Court to set, in equity, the sum of USD\$15,000.00 (fifteen thousand United States dollars) in favor of the representatives of the victim[s]."

280. The **State** considered it "unacceptable to allege said claim [...] without presenting the receipts and other documents" that support it, and reiterated 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 on the occasion of this proceeding." He also indicated that, in relation to the case of Cory Clodolia Tenicela Tello, "no payment of costs and expenses has been requested" so "it must be understood that she is waiving said payment."

281. The Court reiterates that, according to its jurisprudence<sup>332</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.<sup>333</sup>.

282. This Court has indicated that "the claims of the victims or their representatives

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<sup>332</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 193.

<sup>333</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 Coc Max et al. (Xamán Massacre) v. Guatemala, supra*, para. 193.

in terms of costs and expenses, and the supporting evidence, must be submitted to the Court at the first procedural moment that they are granted, that is, in the pleadings and motions brief, without prejudice to such claims being updated at a later time, in accordance with the new costs and expenses incurred during the proceedings before this Court.”<sup>334</sup> 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>335</sup>

283. In the present case, the representatives did not present any probative support regarding the expenses that they had to incur in the stages of the respective proceedings. The representatives only made a generic allusion to the reasons for which they request the reimbursement of costs and expenses incurred by the next of kin and representatives of Wilfredo Terrones Silva, Teresa Aparicio Díaz, Néstor Rojas Medina and Santiago Antezana Cueto. In addition, the Court notes that the representatives did not request reimbursement of costs and expenses with respect to those incurred in the case of Cory Clodolia Tenicela Tello.

284. The Court considers that it is presumable that the organizations APRODEH and COMISEDH incurred expenses to carry out the proceedings for the representation of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Díaz Rojas, and Santiago Antezana Cueto before the Peruvian jurisdiction and before the Inter-American Commission on Human Rights. Similarly, although in the appropriate procedural stage IDL did not require reimbursement of costs and expenses, the Court also considers it reasonable to presume that it incurred expenses for the representation of Cory Clodolia Tenicela Tello. The Court considers it necessary to indicate that said amount does not include the expenses incurred in the proceedings before this Court that were covered by the Victims Legal Assistance Fund. The Court decides to establish, in equity, the amount of US\$ 40,000.00 (forty thousand United States dollars), in favor of APRODEH, the amount of US\$25,000.00 (twenty-five thousand United States dollars) in favor of COMISEDH, and the amount of US\$25,000.00 (twenty-five thousand United States dollars) in favor of IDL, 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 organizations. The alleged expenses incurred by the next of kin of the victims have already been valued under the concept of pecuniary damage. 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 organizations. The alleged expenses incurred by the next of kin of the victims have already been valued under the concept of pecuniary damage. 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 organizations. The alleged expenses incurred by the next of kin of the victims have already been valued under the concept of pecuniary damage.

285. 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.

### **I. Reimbursement of expenses to the Victims Legal Assistance Fund**

286. In the present case, by Order of July 24, 2017, the President of the Court granted, from the Court's Victims Legal Assistance Fund, the financial support necessary to cover the travel and accommodation expenses necessary for Wilfredo Terrones Landázuri, Rosa Carcausto Paco and Marcelina Medina Negrón to be able to participate in the public hearing.

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<sup>334</sup> *Case of Garrido and Baigorria v. Argentina, supra*, para. 79, and *Case Coc Max and others (Xamán Massacre) v. Guatemala, supra*, para. 194.

<sup>335</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 Coc Max and others (Slaughter of Xaman) v. Guatemala, supra*, para. 194.

287. On June 28, 2018, a Disbursement Report was sent to the State in accordance with the provisions of Article 5 of the Regulations of the Court on the operation of the said Fund.

288. The State had the opportunity to present its observations on the disbursements made in the instant case, which amounted to US\$5,095.99 (five thousand and ninety-five United States dollars and ninety-nine cents). By means of a brief of July 9, 2018, the State submitted observations regarding the amounts corresponding to per diem and terminal expenses, which were answered by means of a note from the Secretariat of July 26, 2018.

336.

289. Due to the violations declared in this Judgment and compliance with the requirements to benefit from the Court's Victims' Legal Assistance Fund, this Court orders the State to reimburse said Fund for the amount of USD\$5,095.99 (five thousand ninety-five United States dollars and ninety-nine cents) for the expenses incurred. This amount must be reimbursed within a period of six months, counted from the notification of this Judgment.

#### **J. Modality of compliance with ordered payments**

290. 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 indicated therein or, as requested by the representatives whom they designate so that their collection through an instrument that is valid in the Peruvian legal system, within a period of one year, counted from the notification of this Judgment.

291. In the case of those whose 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, without prejudice to what is indicated in paragraph 293 of this Judgment.

292. The State must comply with its monetary obligations by paying in United States dollars or its equivalent in national currency, using for the respective calculation the exchange rate in force on the New York Stock Exchange, United States of America, the day prior to payment.

293. If, due to causes 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

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<sup>336</sup> Through a note from the Secretariat, it was reported that "the amount used by the Inter-American Court of Human Rights so that the beneficiaries of the Legal Assistance Fund [for] Victims receive the money corresponding to lodging, food, incidental and terminal expenses, has its origin in the per diem table established by the Organization of American States (OAS). [...] Because it is a per diem payment and not an advance for travel expenses, the Beneficiary of the Victims' Legal Assistance Fund should not subsequently present invoices for expenses for the per diem received. [...] Thus, it is confirmed that for the delivery of per diems and accounting records, the receipt of money signed by the Beneficiary of the Fund is sufficient for the Inter-American Court." Likewise, it was indicated that "terminal expenses -or air terminal- are transferred so that the Fund Beneficiary can cover exit or entry taxes to the country, as well as transportation expenses to and from the air terminal, either in the country of origin or in the country of destination. These amounts are also assigned by country in the table provided by the OAS for these purposes. [...] Regarding the declarants in this case, the sum of US\$100.00 was transferred to each one, calculated as follows: \$35.00 corresponding to leaving the country of origin (Peru) to attend the hearing in San José; \$15.00 corresponding to arrival in the destination country (Costa Rica), \$15.00 corresponding to departure from the destination country (Costa Rica), after the hearing, and \$35.00 corresponding to arrival in the country of origin (Peru)".

deposit in a solvent Peruvian financial institution, in US 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.

294. The amounts assigned in this Judgment as compensation and as reimbursement of costs and expenses must be delivered to the indicated persons in full, in accordance with the provisions of this Judgment, without reductions derived from eventual tax charges.

295. 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 bank arrears interest in the Republic of Peru.

## **X RESOLUTIVE POINTS**

296. Therefore,

### **COURT**

### **DECIDE,**

Unanimously,

1. Dismiss the preliminary objection filed by the State regarding the lack of exhaustion of domestic remedies, in relation to the cases of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Cory Clodolia Tenicela Tello, Néstor Rojas Medina and Santiago Antezana Cueto, in the terms of paragraphs 20 to 23 of this Judgment.

2. Dismiss the preliminary objection filed by the State regarding the lack of competence *ratione temporis* of the Court regarding the Inter-American Convention on Forced Disappearance of Persons, in the terms of paragraphs 27 to 29 of this Judgment.

3. Dismiss the preliminary objection filed by the State regarding the lack of competence *ratione temporis* of the Court regarding the Inter-American Convention on the Prevention and Punishment of Torture, in the terms of paragraphs 33 and 34 of this Judgment.

### **DECLARES,**

Unanimously, that:

4. The State is responsible for the violation of the rights to personal liberty, personal integrity, life and recognition of legal personality, established 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 of the Convention, as well as in relation to Article Ia) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina, Cory Clodolia Tenicela Tello and Santiago Antezana Cueto, in the terms of paragraphs 140 to 175 of this Judgment.

## 5. The State is responsible for the violation of judicial guarantees and protection

established 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, contained in Articles 1.1 of the Convention, as well as in relation to Article 1(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Wilfredo Terrones Silva and his family member: Guillermina Frida Landázuri Gómez; of Teresa Díaz Aparicio and her relatives: Graciela Aparicio Pastor and Federico Díaz Aparicio; of Santiago Antezana Cueto and his relatives: Rosa Carcausto Paco, Ermilio Antezana Cueto and Ofelia Antezana Torre; of Néstor Rojas Medina and his relatives: Marcelina Medina Negrón and Tania Collantes Medina, and of Cory Clodolia Tenicela Tello and her relative: Amadea Felipa Tello de Tenicela, all this, in the terms of paragraphs 185 to 206; and 220 of this Judgment. Likewise, Peru is responsible for the violation of judicial guarantees and judicial protection, established in 8.1 and 25.1 of the Convention, in relation to Article 1.1 thereof, for the breach of its obligation to execute the conviction handed down against one of those responsible for the forced disappearance of Santiago Antezana Cueto with due diligence, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222, established in 8.1 and 25.1 of the Convention, in relation to Article 1.1 thereof, for failure to comply with its obligation to execute the conviction handed down against one of those responsible for the forced disappearance of Santiago Antezana Cueto with due diligence, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222, established in 8.1 and 25.1 of the Convention, in relation to Article 1.1 thereof, for failure to comply with its obligation to execute the conviction handed down against one of those responsible for the forced disappearance of Santiago Antezana Cueto with due diligence, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222, in the terms of paragraphs 211 to 214 of the Judgment. In addition, the State is responsible for the violation of the right to know the truth of the next of kin of the disappeared victims in the terms of paragraphs 215 and 216 and 222.

## 6. The State is responsible for the violation of judicial guarantees and protection

established in Articles 8.1 and 25.1 of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rosa Carcausto Paco, Ermilio Antezana Cueto, and Ofelia Antezana Torre, for the failure to investigate the torture of Santiago Antezana Cueto, in accordance with paragraphs 207 to 210 and 221 of this Judgment.

## 7. The State is responsible for the violation of the right to personal integrity

recognized in Article 5.1 of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, to the detriment of Guillermina Frida Landázuri Gómez, Graciela Aparicio Pastor, Federico Díaz Aparicio, Roberto Levi Aparicio, Amadea Felipa Tello de Tenicela, Norma Juana Tenicela Tello, Zenobio Washington Tenicela Tello, Marcelina Medina Negrón, Tania Collantes Medina, Rosa Carcausto Paco, Ermilio Antezana Cueto and Ofelia Antezana Torre, in the terms of paragraphs 227 to 234 of this Judgment.

8. The State is not responsible for the alleged violation of the duty to adopt provisions domestic law, established in Article 2 of the American Convention on Human Rights, in the terms of paragraphs 218 to 219 of this Judgment.

### **AND PROVIDES:**

Unanimously, that:

9. This Judgment constitutes, per se, a form of reparation.

10. The State must continue with the investigations that are necessary to identify, prosecute and, where appropriate, punish those responsible for the forced disappearances of Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello. Said obligation must be fulfilled in accordance with the standards established by the jurisprudence of this Court and within a reasonable time, in accordance with the provisions of the

paragraphs 243, 244 and 246 of this Judgment. In addition, the State must carry out all the necessary steps in order to identify, prosecute and, where appropriate, punish those responsible for the forced disappearance, as well as the torture suffered by Santiago Antezana Cueto, in the terms of paragraphs 245 and 246 of this Judgment.

11. The State must adopt the necessary measures to comply with the judgment issued by the National Criminal Chamber on December 12, 2013 with respect to Santiago Antezana Cueto, in accordance with the provisions of paragraph 245 of this Judgment.

12. The State must, within a reasonable time, make exhaustive search efforts through the appropriate judicial and/or administrative channels, to determine the whereabouts of Santiago Antezana Cueto, Wilfredo Terrones Silva, Teresa Díaz Aparicio, Néstor Rojas Medina and Cory Clodolia Tenicela Tello, in accordance with the provisions of paragraphs 247 and 248 of this Judgment.

13. The State must immediately provide adequate and priority psychological treatment required by Guillermina Frida Landázuri Gómez, Amadea Felipa Tello de Tenicela, Norma Juana Tenicela Tello, Zenobio Washington Tenicela Tello, Marcelina Medina Negrón, Tania Collantes Medina, Rosa Carcausto Paco, Ermilio Antezana Cueto, and Ofelia Antezana Torre, in the terms of paragraph 252 of this document. Judgment.

14. The State must make the publications indicated in paragraph 254 of this Judgment.

15. The State must carry out a public act of acknowledgment of international responsibility in relation to the forced disappearance of the victims, in the terms of paragraph 255 of this Judgment.

16. The State must place a plaque in honor of Teresa Díaz Aparicio and the recognition that she was forcibly disappeared by state agents, in the terms of paragraph 256.

17. The State must pay the amounts established in paragraphs 270 to 277 of this Judgment, as compensation for pecuniary and non-pecuniary damage and for the reimbursement of costs and expenses, in the terms of paragraph 284.

18. The State must repay the Court Assistance Fund the amount established in paragraph 289, in the terms of said paragraph of this Judgment.

19. 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 254 of this Judgment.

20. 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.

Judge Eduardo Vio Grossi informed the Court of his concurring opinion, which accompanies this Judgment.

Written in Spanish in San José, Costa Rica, on September 26, 2018.



IHR Court. Case *Terrones Silva et al. v. Peru*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 26, 2018.

Eduardo Ferrer Mac-Gregor Poisot  
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Eugenio Raul Zaffaroni

L. Patricio Pazmino Freire

Pablo Saavedra Alessandri  
Secretary

Communicate and execute,

Eduardo Ferrer Mac-Gregor Poisot  
President

Pablo Saavedra Alessandri  
Secretary