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Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	William Leon Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Munoz, Zenon Huamani Chuchon, Julio Arotoma Cacnahuaray, Honorata Ore De Arotoma, Eleuterio Fernandez Quispe, Napoleon Quispe Ortega, Onofredo Huamani Quispe, Luis Amaru Quispe and Honorato Laura Lujan v. Peru
Doc. Type:	Report
Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	13 April 1999
Citation:	Leon Laurente v. Peru, Case 10.807, Inter-Am. C.H.R., Report No. 10.807, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

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I. BACKGROUND

1. In complaints received by the Inter-American Commission on Human Rights (hereinafter "the Commission" between 24 February 1991 and 6 July 1992, it was alleged that the Republic of Peru (hereinafter "Peru" or "the State") violated the rights of William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, by reason of their arbitrary detention in the Department of Ayacucho by military personnel of the Peruvian army and by their subsequent enforced disappearance. The petitioners allege that, as a consequence of these disappearances, the State violated the right to life of the above-mentioned victims and other rights protected in the American Convention on Human Rights (hereinafter "the Convention").[FN1]

[FN1] Since the facts alleged in the six cases under review are basically the same, arising as they do from the same event which took place in the same region and at the same time, were attributed to military personnel and committed in a manner consistent with conduct reflective of State policy, the Commission has decided, in accordance with the provisions of Article 40(2) of its rules of procedure, to combine the cases and to treat them as one.

II. FACTS OF THE CASE, PROCEEDINGS AND POSITION OF THE STATE

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A. Detention and disappearance of William León Laurente (Case 10.807)

Facts of the case

2. William León Laurente was 17 years of age, a student, single and residing in Avenida Federico Rischter in the Alameda district of the city of Huanta, Department of Ayacucho. On 21 December 1989, at 1 a.m., six armed and hooded individuals, dressed in civilian clothing, broke into the family home of the victim in which were present, in addition to the victim, his father Isaac Cristino León Laurente, his mother and his brother Wilfredo León Laurente, 12 years of age. The intruders searched the house and seized the sum of 1,350,000.oo Intis in cash together with a photostat copy of a voter's registration card. The victim was tied and his head covered with cloth. The aforementioned individuals immediately left the house taking the victim with them and headed for the Castropampa military barracks, in the city of Huanta.

3. Following this incident, the father of the victim contacted Mrs. Victoria Cárdenas Paz, who had ties and shared friendships with personnel from the Peruvian army quartered in the above-mentioned military barracks of Castropampa. Mrs. Cárdenas made inquiries of the military and the father of the victim was told that his son was detained in the military barracks of Castropampa. He was given as proof of this the aforementioned photostat copy of the voter registration card which the victim had in his possession at the time of his arrest. Mrs. Cárdenas requested a sum of money to obtain the victim's release from the military. Nevertheless, after being given a part of the sum requested, she returned it to the victim's father stating that she could no longer do anything for his son.

4. The acts in question were reported to the Technical Police, who arrested Mrs. Victoria Cárdenas Paz. She confessed her participation in the demand for ransom for the release of the victim and her intercession in that regard with the military personnel. In addition, other detained persons saw William León Laurente in the Castropampa military barracks until the day of 27 December 1989.

5. The family of the victim made numerous approaches to local and national authorities in an attempt to obtain his release. In the majority of those initiatives, the victim's family received assistance from the non-governmental organization APRODEH. One of the initiatives taken, on 16 January 1990, was a writ of habeas corpus filed before the examining magistrate of Huanta. At the same time, the facts surrounding the detention of León Laurente were reported to the senior Government procurator in Ayacucho, to the Attorney-General of the Nation, to the Political/Military Chief of Huanta and to the Provincial Criminal Procurator of Huanta, despite all of which William León Laurente failed to reappear.

Proceedings before the Commission

6. On 14 March 1991, the Commission opened the case, transmitted the relevant parts of the complaint to the State of Peru and requested information to be presented within a period of 90 days. The State responded on 21 September 1992 and forwarded additional information on 15 October 1992, 20 September 1993 and 9 April 1997.

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Friendly settlement

7. On 16 June 1998, both parties were requested to update the information which they had communicated to the Commission about the case and were informed that the Commission was at their disposal to try to reach a friendly settlement of the case. On 3 August 1998, the State reaffirmed its previously stated arguments, questioned the admissibility of the case and stated that it would be inappropriate to initiate friendly settlement proceedings. The petitioning side, for its part, did not respond.

Position of the State

8. The State maintains that the victim had not been detained by military forces.

B. Detention-disappearance of Alfonso Aguirre Escalante - Case 10.808

Facts of the case

9. Alfonso Aguirre Escalante was an engineer, 38 years old and married to Marcelina García Medina de Aguirre. Three children had been born to the couple, namely, Dana, Daivali and Leeshlee Aguirre García and a fourth was on the way. Mrs. Marcelina García Medina de Aguirre was three months pregnant. Mr. Aguirre Escalante worked for the South Centre Special Project in the Ministry of the Office of the President, where he held the position of Project Supervising Engineer. The family's home was situated in Avenida Arenales, Nº 533, Ayacucho.

10. At 2 a.m. on 8 February 1990, a heavily armed group of military personnel, wearing green plastic ponchos with hoods over their faces and armed with machine guns, broke into the home of the Aguirre García family and arrested and took away Mr. Aguirre Escalante. In doing so, they dragged him out forcibly from his bedroom, still in his nightclothes and without his identification papers, placed him in a military vehicle and took him to the Los Cabitos BIM 51 military barracks. A few days later, he was transferred to the Quicapata barracks, a few kilometers from the city of Ayacucho, and from there taken to the Cangallo barracks.

11. The family of the victim took numerous steps and initiatives of various kinds to try to obtain his release. In one of those initiatives, they went to the Los Cabitos BIM 51 military barracks in the company of the Provincial Procurator responsible for the Special Office of the Procurator for Human Rights of Ayacucho, where they were received by the Political/Military Chief, who indicated that he would order an investigation. That investigation was never ordered.

12. The family of the victim took numerous other measures before local and national authorities to try to obtain his release. In most of those measures, they received assistance from the non-governmental organization APRODEH. One of the steps taken by Mrs. Marcelina García Medina de Aguirre was to report the incident to the Office of the Senior Procurator of Ayacucho. In addition, on 14 March 1990, a complaint was made to the Attorney General of the Nation and a writ of habeas corpus filed before the sitting magistrate of Cangallo. On the same date, 14 March 1990, approaches were made to the General of the Peruvian Army, Petronio Fernández

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Dávila Carnero, Political/Military Chief of Ayacucho, under whose command the personnel who had detained the victim fell. On 15 March 1990, Casiano Aguirre Escalante, the brother of the victim, reported the case to the Assistant Senior Criminal Procurator, who was responsible for the Special Public Defender's and Human Rights Office. Despite all the steps taken by family members and third parties, Alfonso Aguirre Escalante was never seen again.

Proceedings before the Commission

13. On 14 March 1991, the Commission opened the case, transmitted the relevant parts of the complaint to the Peruvian State and requested that information should be submitted to it within a period of 90 days. The State responded on 19 July 1991. The petitioning side submitted its observations on the State's reply on 13 February 1992. Peru submitted additional information on 11 November 1992 and on 18 January 1994.

Friendly settlement

14. On 16 June 1998, both parties were requested to update the information provided to the Commission on the case and were told that the Commission was prepared to work with them in an attempt to achieve a friendly settlement of the case. On 3 August 1998, the State reiterated its earlier arguments, questioned the admissibility of the case and stated its view that it would not be appropriate to initiate friendly settlement proceedings. The petitioning side, for its part, did not respond.

Position of the State

15. In its response dated 19 July 1991, the State alleged that the victim had not been detained by personnel of the army or of the National Police. On 30 September, the State claimed that it was investigating the incident and on 2 December 1993, it reiterated that the detention had not been the work of military personnel.

C. Detention-disappearance of Eladio Mancilla Calle - Case 10.809

Facts of the case

16. Eladio Mancilla Calle was 46 years old and married to Abelina Castilla de Mancilla, with whom he had 7 children: Juan José, Miriam, José Angel, Laura, Sulman, Margot and Liria Mancilla Castilla. All of the children were minors. The Mancilla Castilla family resided in the San Sebastián district of the city of Huamanga, Department of Ayacucho.

17. Mancilla Calle worked as a construction foreman and was working at the time on a paving project in the San Sebastián district, of which he was in charge in his capacity as supervisor of the project. Mancilla Calle had served as district leader since 1973, approximately, up to 1985. Mancilla Calle was responsible for the financial upkeep of his wife and the couple's 7 children.

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18. On 6 June 1990, at approximately 9 a.m., 15 members of the Peruvian army, their faces covered with hoods and dressed in black sweaters and military uniforms, appeared at the home of the Mancilla Castilla family. The military personnel restrained Eladio Mancilla Calle, without offering any explanation and subjected him to a body search. Upon finding a scar, which was the sequel of a surgical operation, the military personnel took the victim outside into the street, despite the pleadings of his wife and young children, who wept and begged the military on behalf of the victim. Once in the street, the military beat the victim in front of his wife, children and neighbors and placed him in a blue van, which took him to the Los Cabitos BIM 51 Barracks.

19. The family of the victim took numerous steps and initiatives of various kinds to try to obtain the release of Eladio Mancilla Calle. One of the steps taken was to go accompanied by the Procurator responsible for Human Rights to the Los Cabitos Barracks and to Quica Pata, where officials denied that they were holding the victim.

20. The family of the victim took numerous other measures to local and national authorities to try to obtain his release. In most instances, they received support from the non-governmental organization CEAPAZ. In one such measure, Mrs. Abelina Castilla de Mancilla, the victim's wife, reported the incident on 8 June 1990 to the Procurator responsible for the Investigation of Victims of Detention, Enforced Disappearance and Violations of Human Rights of Ayacucho. On 11 July 1990, Benigno Mancilla Rosas, the father of the victim, reported the case to the Senior Procurator of Ayacucho. The case was also reported to the Attorney-General of the Nation on 26 July 1990. Approaches were also made to the Peruvian Army General Petronio Fernández Dávila Carnero, Political/Military Chief of the District of Ayacucho, under whose command the personnel who had detained the victim fell. Despite all these steps taken by the family of the victim and by third parties, Eladio Mancilla Calle was never seen again.

Proceedings before the Commission

21. On 14 March 1991, the Commission took up the case, transmitted the relevant portions of the complaint to the Peruvian State and requested that information be submitted to it within 90 days. The State responded on 9 January 1992 and sent additional information on 21 September 1992, 2 March 1994 and 3 May 1994. The petitioner presented his observations on the reply of Peru on 11 May 1992 and on 20 August 1993 submitted an additional communication.

Friendly settlement

22. On 16 June 1998, the two parties were requested to update the information which they had provided to the Commission on the case and were informed that the Commission was at their disposal to try to facilitate a friendly settlement of the case. On 3 August 1998, the State reiterated its earlier arguments, questioned the admissibility of the case and expressed the view that it would not be appropriate to initiate friendly settlement proceedings. The petitioning side for its part did not respond.

Position of the State

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23. The State maintains that the victim had not been detained by military personnel and claims to be investigating the case.

D. Detention and disappearance of Constantino Saavedra Muñoz.- Case 10.810

Facts of the case

24. Constantino Saavedra Muñoz was 40 years old, an agronomist and married to Maximiliana Rómula Quispe Montes de Saavedra, with whom he had four children. In addition, the pair had assumed the care of two other minor children--nephews of Maximiliana Rómula Quispe Montes de Saavedra--whose parents had been murdered in the forest. Constantino Saavedra Muñoz was a former official of the district of Quinua-Huamanga (Deputy Mayor during the Government of Fernando Belaúnde) and a former leader of the Departmental Federation of Peasants of Ayacucho (FADA), the base of the CCP. The Saavedra Quispe family resided at Jr. Libertad Nº 793, Ayacucho, Province of Huamanga, in the Department of Ayacucho.

25. On 1 October 1990, at approximately 9.30 a.m., Saavedra Muñoz went to the Office-Workshop of the Development Corporation of the City of Huamanga (CORFA), in the company of Gilberto Aparicio and Plácido Juscamayta, for the purpose of discussing the rental of a tractor for agricultural work. The engineer responsible for heavy machines informed him that tractors were rented for a minimum of 50 hours and that a formal request was needed as well as the authorization of the Peasant Community of Quinúa.

26. Upon completion of the meeting in CORFA, at approximately 10 a.m., Constantino Saavedra Muñoz, Gilberto Aparicio and Plácido Juscamayta left the offices of the Corporation. They then noticed the presence in the area of a large group of persons belonging to the civil defense group of Acosvinchos and that there was also a van and a car, both belonging to the army. Despite this, the three persons mentioned above continued on their way and were then intercepted by personnel from the Intelligence Unit of the Army, who were in the neighborhood dressed in civilian clothing. The army personnel in question requested their identity papers. Thereupon, they were detained and forcibly placed in the cabin of the van.

27. The van then proceeded to the Los Cabitos BIM 51 Barracks. Upon entering the barracks, the three detainees did not have any type of blindfold on their eyes and were thus able to see perfectly that they were without any doubt in the Los Cabitos BIM 51 Barracks. Once inside the barracks, the three men were searched and separated. Each of them was held in a separate but adjoining area. Within a short time, the military personnel began to interrogate, torture and pressure them to confess that they were terrorists. Saavedra Muñoz was asked specifically if he knew Francisco Paucar. One of the witnesses declared as follows:

In the barracks they spoke about the detainees' families. Detainees could be put in an oven. There was an oven in the barracks in which they fired bricks. A person could only survive for three quarters of an hour there. There they were burnt without leaving traces. In this way, they were totally erased.

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28. The military personnel later released Gilberto Aparicio and Plácido Juscamayta, but before doing so, they threatened them with death, both themselves and their families, if they related what they had seen in the barracks. Constantino Saavedra Muñoz was kept in the barracks. Before they were released, his companions heard his voice on 2 October 1990 at 11 a.m.

29. Mrs. Maximiliana Rómula Quispe Montes de Saavedra, the victim's wife, who had been desperately searching for her husband, learnt from his companions who had been released of the circumstances of his detention. She therefore went immediately to visit her husband and to try to obtain his release. On arriving at the Los Cabitos BIM 51 Barracks, she was received by the General in charge of the military base, who denied that her husband was detained in the barracks.

30. The wife of the victim made numerous efforts to obtain her husband's release. In one such efforts, she reported the case on 3 October 1990 to the Senior Procurator for the Investigation of Cases of Enforced Disappearance and Violations of Human Rights of Ayacucho. In addition, on 5 October 1990, she sought the intercession of the Archbishop of Ayacucho and on 18 October 1990 submitted a report to a delegation from the National Council of Churches which visited Ayacucho. On 31 October 1990, she reported the incident to the Special Human Rights Unit in the Office of the Attorney-General.

31. The family of the victim made numerous other attempts with local and national authorities to obtain his release. In most cases, they were supported by the non-governmental organization CEAPAZ. In one of the steps taken, on 3 October 1990, a writ of habeas corpus was filed on behalf of the victim before the sitting magistrate of Huamanga, Ayacucho. On the same date, the case was reported to the Senior Procurator of Ayacucho and approaches were made to the Political/Military Chief of Ayacucho. On 23 November 1990, the incident was reported to the Attorney General of the Nation. On 27 November 1990, a complaint was lodged with the President of the Commission charged with the Investigation of Disappearances and Assassinations in Chumbivilcas, San Pedro de Cacchi and others. Various measures were also taken before local and national authorities. Despite all of these efforts, the victim was never seen again.

Proceedings in the Commission

32. On 14 March 1991, the Commission took up the case, transmitted the relevant portions of the complaint to the Peruvian State and requested that information be submitted to it within 90 days. The State responded on 9 January 1992 and presented additional information on 21 September 1992 and on 3 August 1993. The petitioner side submitted his observations on the State's reply on 13 May 1992 and on 5 August 1993 submitted additional information in writing.

Friendly settlement

33. On 16 June 1998, the two parties were requested to update the information they had provided to the Commission on the case and the Commission indicated its readiness to try to facilitate a friendly settlement of the case. The State, on 3 August 1998, reiterated its earlier

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arguments, questioned the admissibility of the case and indicated that it would not be appropriate to initiate friendly settlement proceedings. The petitioner, for its part, did not respond.

Position of the State

34. The State denies having detained the victim.

E. Detention and disappearance of Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe and Luis Amaru Quispe (Case 10.879)

Facts of the case

35. Zenón Huamaní Chuchón was 47 years old, married and had four children. He was employed as a teacher in the District of Huanacaraylla and as Secretary-General of the Union of Peruvian Education Workers (SUTEP) in the province of Victor Fajardo.

36. Julio Arotoma Cacñahuaray was approximately 54 years old, a teacher and employed as the Director of the Educational Services Unit of the Province of Victor Fajardo. He was married to Honorata Ore De Arotoma. The couple had 7 children. Mrs. Honorata Ore De Arotoma was eight months pregnant with the eighth child of the couple.

37. Eleuterio Fernández Quispe was 38 years old, married, with three children and employed as a teacher in the District of Huancapí, capital of the province of Victor Fajardo. Napoleón Quispe Ortega was 33 years old and a student at the Higher Technological Institute of Huancapí. Onofredo Huamaní Quispe was also employed as a teacher, while Luis Amaru Quispe was 28 years old and employed at the Higher Technological Institute of Huancapí.

38. On Friday 19 April 1991, at approximately 9:30 p.m., Zenón Huamaní Chuchón, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe and Luis Amaru Quispe were walking along the street in Huancapí, the capital of the province of Victor Fajardo, in the department of Ayacucho, after celebrating their inscription as candidates in the municipal bye-elections on the list of the political movement the Socialist Leftist Union. Along the way, they were intercepted by approximately 15 personnel of the Peruvian army from the military base at Huancapí, dressed in their official uniforms, who proceeded to arrest them, beat them and take them violently away to the aforementioned military base.

39. While they were being taken to the military base, the aforementioned detained individuals shouted for help from Julio Arotoma Cacñahuaray as they passed in front of his house. Arotoma Cacñahuaray interceded on behalf of the detained persons and because of that the military personnel proceeded to detain him also. Mrs. Honorata Ore De Arotoma, the wife of Mr. Arotoma Cacñahuaray, went outside to find out what was happening to her husband and the response of the military was to arrest her as well. The group of detained persons now numbering seven was then taken to the military base of Huanacapí, which was under the responsibility of a second lieutenant named José Luis Chávez Velásquez, alias the Centaur, and a lieutenant of the Peruvian army by the name of Carlos Morgan Frisancha.

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40. A group of persons made up of the family members of the detained individuals and other persons from the area followed closely the group comprised of the military and the detained, some of whom were walking while the others were being dragged along by force. The military brutally beat the arrested persons and fired shots in the air. The detained persons were shouting out in pain and fear, begging the military to stop hitting them.

41. When the group reached the "Arco", which is a wooden gate situated at one of the corners of the Municipal Stadium leading into the military base, the soldiers attempted to disperse the group that was following them. When this attempt failed, they shut off the generator that provided electricity to the town and continued to fire shots into the air, thereby succeeding in dispersing the families of the detained persons and the other individuals who were following them. After that group had left, at approximately 11:30 p.m., a number of new detonations were heard, but this time from within the military base.

42. The next day, Yolanda Arotoma Ore, the daughter of Julio Arotoma Cacñahuaray and Honorata Ore de Arotoma, went to the military base in the company of the wife of Luis Amaru Quispe to take food to the detained persons. The military personnel did not accept the food and told them that there were no detainees there and that they should go to h... Later, the military denied that they had detained the victims and kept the families of the victims under strict watch to try to prevent them from communicating with the authorities in Ayacucho.

43. The families of the victims made numerous approaches to the local and national authorities to try to obtain their release. In most of these efforts, they received the support of the non-governmental organization CEAPAZ. One such effort was the complaint lodged on 23 April 1991 by Gloria Huamaní Palomino with the Senior Procurator responsible for the investigation of cases of disappeared persons in Ayacucho. The incident was also reported to the Provincial Procurator of Victor Fajardo, who instituted criminal proceedings against the second lieutenant of the Peruvian army José Luis Chávez Velásquez, alias the Centaur, for crimes against personal liberty and abuse of authority to the detriment of the victims. The charge was heard by the Examining Magistrate of the same province on 14 October 1991.

Proceedings in the Commission

44. On 17 May 1991, the Commission took up the case, transmitted the relevant portions of the complaint to the Peruvian State and requested that information be submitted to it within 90 days. The State responded on 29 July 1991 and submitted additional information on 10 September 1992. The petitioner submitted his observations on the response of the State on 16 March 1992 and submitted additional information on 22 January 1993.

45. On 16 June 1998, both parties were requested to update the information on the case which they had provided to the Commission and were informed that the Commission was at their disposal to try to reach a friendly settlement of the case. The State, on 3 August 1998, reiterated its earlier arguments, questioned the admissibility of the case and expressed the view that it would not be appropriate to initiate friendly settlement proceedings. The petitioner, for his part, did not respond.

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Position of the State

46. In its response dated 29 July 1992, the State denied that the victims had been detained by military personnel. In its additional submission dated 10 September 1993, Peru stated that, with a view to clarifying the facts of the case, the Permanent Military Court of Ayacucho had initiated proceedings for the crime of abuse of authority and other crimes against the Chief of the Military Base and other responsible persons. On August 3, 1998, the State argued that the judicial investigation had failed to confirm that the alleged acts had been committed. It also stated that, in that proceeding, the relatives of the persons reported missing did not confirm that it had been soldiers who abducted their relatives. The State added that on the day in question the Shining Path had declared a work stoppage and enforced it at gunpoint, and that, consequently, the State presumed that those persons had been abducted by subversive criminals. The State also claimed that the case was inadmissible because domestic remedies had not been exhausted and the petition was manifestly flawed.

F. Detention and disappearance of Honorato Laura Luján - Case 11.037

Facts of the case

47. Honorato Laura Luján was 58 years old, a peasant and married to Olivia Andía Urbano de Laura. They both resided in the District of Pullo, province of Paranicochas, in the Department of Ayacucho. The couple had one daughter named Asunción Laura Andía and it was not known whether they had other children.

48. On 4 June 1992, Mrs. Andía Urbana and Mr. Laura Luján were with the Governor of the locality of Pullo. At the said time, Mr. Laura Luján was in a drunken state. Mrs. Andía Urbano complained to the Governor about a problem which she had with her husband, even though she was aware of the ill-treatment to which detainees in the military base of Pullo were subject. She, however, specifically requested the Governor not to send her husband to the above-mentioned military base. Nevertheless, the Governor sent Laura Luján to the aforementioned military base, where he was detained for two days, in other words, up to 6 June 1990. During his detention, the victim was severely tortured by military personnel.

49. On 7 June 1990, the victim met with a group of friends in a neighborhood bar, recounted aloud the forms of torture to which he had been subjected and declared that he was going to lodge a complaint against the military for having tortured him. In a short while, the military personnel from the Pullo base whom Mr. Laura Luján had announced he was going to denounce arrived on the scene and proceeded to arrest him. Mr. Honorato Laura Luján did not denounce the torture to which he had been subjected, since the military denied that they had detained him and then proceeded to "disappear" him.

50. The family of the victim made numerous approaches to the local and national authorities to try to obtain his release. In most instances they received assistance from the non-governmental organization CEAPAZ. In one of the initiatives taken, his wife, Olivia Andía Urbano de Laura and her daughter, Asunción Laura Andía, made numerous efforts to locate the whereabouts of

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the victim. On 3 July 1992, for example, they reported the incident to the Provincial Procurator of Parinacochas and to the Senior Procurator of the Department of Ayacucho. On the same date, a writ of habeas corpus was filed before the sitting magistrate of Parinacochas.

51. On 3 July 1992, complaints were also lodged with the Political/Military Chief of Ayacucho and with the Chief of the Pullo Military Base. On 8 July 1992, the case was reported to the Attorney General of the Nation and to the Senior Criminal Procurator responsible for the Public Defender's and Human Rights Office. On the same date, the Ministry of Defense was requested to intervene in the case on the victim's behalf. Despite all of these efforts, Honorato Laura Luján never reappeared.

Proceedings in the Commission

52. On 13 July 1992, the Commission took up the case, transmitted the relevant portions of the complaint to the Peruvian State and requested that information be submitted to it within 90 days. The State responded on 4 November 1992 and submitted additional information on 17 June 1993 and on 28 March 1994. The petitioner submitted his observations on the response of the State on 25 August 1993.

Friendly settlement

53. On 16 June 1998, both parties were requested to update the information on the case which they had submitted to the Commission and were informed that the Commission was at their disposal to try to reach a friendly settlement of the dispute. The State, on 3 August 1998, reiterated its earlier arguments, questioned the admissibility of the case and expressed the view that it would not be appropriate to initiate friendly settlement proceedings. The petitioner side, for his part, did not respond.

Position of the State

54. The State denied that it had detained Honorato Laura Luján and added that on 4 June 1990 the victim had spent 15 minutes in the Pullo Military Base in connection with a family dispute with his wife. Except for this incident, however, Mr. Honorato Laura Luján had not been detained by military personnel.

III. FRIENDLY SETTLEMENT

55. As explained earlier with regard to the processing of all the cases analyzed here, the Commission, in accordance with the provisions of Article 48(1)(f) of the Convention, placed itself at the disposal of the parties to assist them in seeking a friendly settlement based on respect for the human rights recognized in the Convention. However, for the reasons we have referred to above, that option was not pursued.

IV. COMPETENCE OF THE COMMISSION

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56. The Commission is competent to review the above petitions. The petitioners have the legal standing to present their case and have complained of failures by agents of a State party to comply with provisions of the Convention. The events alleged by the petitioners took place at a time when the obligation to respect and guarantee the rights established in the Convention was already in force for the Peruvian State.[FN2]

[FN2] Peru ratified the American Convention on Human Rights on July 28, 1978.

V. ADMISSIBILITY OF THE SPECIFIC CASES

57. Given that the Commission is competent to hear these cases--in other words, the petitions under review meet the basic requirements for the Commission's international function of ruling on allegations of human rights violations--the Commission will now proceed to determine the admissibility of the cases under review, according to the provisions of Articles 46 and 47 of the Convention.

A. Exhaustion of domestic remedies

58. As stated earlier, the relatives of the victims applied on numerous occasions to various judicial, executive (military), and legislative authorities to locate the victims and secure their release. These efforts usually included writs of habeas corpus; complaints to the Attorney General, the Chief Prosecutor in Ayacucho, the Special Attorney for Human Rights in Ayacucho, the Office of the Special Ombudsman, and the Offices of the Provincial Prosecutors; and appeals to the Ministry of Defense, the Army High Command, the Office of the Inspector General of the Army, the Political-Military Commander in Chief, and the commanding officers at the military bases concerned. Despite all these efforts, the victims were never located and never reappeared.

59. All these procedures and appeals by the relatives of the victims proved fruitless, because the same people who had allegedly brought about the disappearances and who hid the evidence played a key part in the results of the investigations. None of the writs of habeas corpus was successful in any of the cases. Likewise, the complaints filed with the offices of the government prosecutors led to little more than a request for information from the military, who would deny the detention. The cases were then shelved without ever being brought before the competent court of the first instance. It should be added that generally the Peruvian Government's replies to the Commission denying responsibility for the disappearances are based precisely on photocopies, sent to the Commission, of official communications in which the military itself denies having carried out the arrests.

60. The fact that, during the early stages of the proceedings, the State did not claim failure to exhaust domestic remedies in virtually any of the cases would be sufficient grounds for the Commission to find that the requirement established in Article 46 (1)(a) of the Convention has been met.

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61. Nevertheless, the Commission considers it important to provide certain clarifications regarding the exhaustion of domestic remedies in connection with the forced disappearances in Peru. In this regard, it should be noted that the Inter-American Court of Human Rights has held, in connection with the exhaustion of domestic remedies, that, "in keeping with the object and purpose of the Convention and in accordance with an interpretation of Article 46 (1)(a) of the Convention, the proper remedy in the case of the forced disappearance of persons would ordinarily be habeas corpus, since those cases require urgent action by the authorities" (and it is) "the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty."[FN3] Thus, when a writ of habeas corpus is presented in the case of persons who were detained and then disappeared, and nothing comes of it because the victims are not located, those are sufficient grounds for finding that domestic remedies have been exhausted.[FN4]

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, paragraph 65, and Caballero Delgado Santana case, Preliminary objections, Judgment of January 21, 1994, paragraph 64.
[FN4] Inter-American Court of Human Rights, Caballero Delgado y Santana case, op.cit., paragraph 67.

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62. However, the Court has also ruled that domestic remedies must be effective, that is, they must be capable of producing the results for which they were intended,[FN5] and that if there is proof of a practice or policy, ordered or tolerated by the government, the effect of which is to prevent certain persons from availing themselves of internal remedies that would normally be available to all others, resorting to those remedies becomes a senseless formality, so that the exceptions to the exhaustion of domestic remedies provided for in Article 46 (2) of the Convention would be fully applicable.[FN6]

[FN5] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 68.
[FN6] Idem, paragraphs 63 and 66.

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63. In its analysis of the substance of the case, set forth in section VI below, the Commission finds that, during the period in which the alleged events took place, there existed in Peru a practice or policy of disappearances, ordered or tolerated by various government authorities. For that reason, and given that that practice rendered writs of habeas corpus completely ineffective in cases of disappearances,[FN7] the Commission finds that, for purposes of admissibility of complaints before this Commission, it was not necessary to attempt the habeas corpus remedy--or any other--in order to exhaust domestic remedies. Consequently, the Commission considers that the rule regarding exceptions to the exhaustion of domestic remedies established in Article 46(2) of the Convention is fully applicable. Nevertheless, the Commission observes that, in these cases, such efforts and remedies at the domestic level were attempted to no avail. Accordingly, the Commission finds that the admissibility requirement relating to exhaustion of domestic remedies has been met in the cases at hand.

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[FN7] The National Coordinating Body for Human Rights stated, for example: in 1993, 56 cases of disappeared detainees have been reported. Of those persons, six were released after many months of detention, two were later prosecuted for terrorism, and 49 have never reappeared. National Coordinating Body for Human Rights, Report on the Situation of Human Rights in Peru in 1993, page 11.

B. Form requirements

64. The petitions are in proper legal form, as established in Article 46(1)(d) of the Convention.

C. Duplication of procedures and resubmission of petition previously examined

65. Since the State has not put forward any argument in this regard, the understanding of the Commission is that the questions raised in the petitions are not pending of settlement in any other international proceedings and are not identical in substance to petitions previously examined by this Commission or by another international organization. Thus it finds that the requirements set forth in Articles 46(1)(c) and 47(1)(d) of the Convention have also been met.

D. Basis for the petitions

66. The Commission finds that, in principle, the complaints of the petitioners refer to events that could constitute violations of rights guaranteed under the Convention. Since there is no evidence that the petitions are either manifestly groundless or out of order, the Commission finds that the requirements of Articles 47(b) and 47(c) of the Convention have been met.

67. For the foregoing reasons, the Commission finds that the cases under review are admissible.

VI. EXAMINATION OF THE MERITS

A. Disappearances in Peru

Disappearances brought about by the State

68. As established earlier, the Commission decided to combine the cases under review because it considers that the alleged events suggest a pattern of disappearances brought about by Peruvian State agents around the same time period (1989-1993), within the context of what are called anti-subversive activities, and employing the same modus operandi.

69. The Commission therefore decided to look into the possible existence of a practice of forced disappearances brought about by the Peruvian State, or at least tolerated by it, during the period in question (1989-1993). The Commission cannot ignore, to use the words of the Inter-

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American Court, "the special seriousness of finding that a State Party to the Convention has carried out or has tolerated a practice of disappearances in its territory."[FN8] Nonetheless, it is crucial that the Commission, in accordance with the functions assigned to it, carry out that analysis, not only for the purposes of this report, but also to arrive at the truth regarding a policy of human rights violations, with all its possible repercussions for the clarification of other cases that have come to the attention of this Commission.

[FN8] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 129.

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70. In this regard, it should be pointed out that the criteria used to evaluate evidence in an international court of human rights have special standards,[FN9] which empower the Commission to weigh the evidence freely and to determine the amount of proof necessary to support the judgment.[FN10]

[FN9] Inter-American Commission of Human Rights, Loayza Tamayo case, Judgment of September 17, 1997, paragraph 42.
[FN10] Inter-American Court of Human Rights, Velásquez Rodríguez case. op.cit., paragraph 127

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71. The modus operandi used, according to the petitions received by the Commission, in the arrests and disappearances in the cases in question, involving Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, shows an overall pattern of behavior that can be considered admissible evidence of a systematic practice of disappearances.

72. The Commission has received a very large number of complaints of disappearances in Peru, many of which pertain to multiple disappeared persons. In its 1993 Report on the Situation of Human Rights in Peru, the Commission discussed the problem of the forced disappearance of persons in that country and indicated that it had already passed 43 resolutions regarding individual cases involving 106 victims.[FN11] Subsequently, the Commission has continued to write reports on the matter.[FN12] Moreover, the Peruvian State itself has officially recognized the existence of forced disappearances and has reported on 5,000 complaints of disappearances between 1983 and 1991.[FN13] The large number of complaints of this type is a clear indication, in the Commission's view, that disappearances in Peru followed an official pattern devised and carried out in a systematic manner.

[FN11] Document OEA/Ser.L/C/II.83. Doc. 31 (1993).
[FN12] See the IACHR's annual reports.

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[FN13] Presidential instructions regarding Human Rights, September 9, 1991. Cited in: IACHR, report on the Situation of Human Rights in Peru (1993), op.cit., paragraph 17.
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73. This indication is supported by the fact that, at the United Nations (UN), the Working Group on Enforced or Involuntary Disappearances, established by the Commission on Human Rights in 1980, had received 3,004 cases of forced disappearances in Peru. That Group points out that:

The vast majority of the 3,004 cases of reported disappearances in Peru occurred between 1983 and 1992, in the context of the Government's fight against terrorist organizations, especially the "Shining Path" (Sendero Luminoso). In late1982, the armed forces and police undertook a counter-insurgency campaign and the armed forces were granted a great deal of latitude in fighting Shining Path and in restoring public order. While the majority of reported disappearances took place in areas of the country which had been under a state of emergency and were under military control, in particular in the regions of Ayacucho, Huancavelica, San Martín, and Apurímac, disappearances also took place in other parts of Peru. Detentions were reportedly frequently carried out openly by uniformed members of the armed forces, sometimes together with Civil Defense Groups. Some 20 other cases reportedly occurred in 1993 in the Department of Ucayali and concerned largely the disappearance of peasants.[FN14]

[FN14] Report of the Working Group on Enforced or Involuntary Disappearances. UN document E/CN.4/1998/43, dated January 12, 1998, paragraph 297 (unofficial translation).
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74. Dr. Imelda Tumialán, the ad hoc Provincial Prosecutor for the Department of Junín, has placed on record that in 1991 there were more than 100 disappearances in that Department.[FN15] Likewise, in a note dated January 9, 1992, Peru's Assistant Attorney General pointed out that in the first 11 months of 1991 there had been 268 complaints of disappearances, and that only a few cases had been solved. For its part, the National Coordinating Body for Human Rights in Peru, a recognized nongovernmental umbrella group of various Peruvian human rights organizations, estimates that 725 persons disappeared in Peru between 1990 and 1992.[FN16] The Commission has been told that reports circulating freely in Peru indicated that military personnel, and in some cases police officers, were carrying out disappearances. The Commission has received numerous articles and news reports on such disappearances, published by the print media and others.

[FN15] Legal defense Institute: "Peru Today, down the Dark Path of War, 1991, page 150.
[FN16] National Coordinating Body for Human Rights. Report on the Human Rights Situation in Peru in 1992, page 64.
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75. On the basis of the foregoing evidence, the Commission concludes that in the 1989-1993 period there existed in Peru a systematic and selective practice of forced disappearances, carried

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out by agents of, or at least tolerated by, the Peruvian State. That official practice of forced disappearances was part of the "fight against subversion", although in many cases it harmed people who had nothing to do with the activities related to dissident groups.

B. Perpetration of the disappearances

76. On the basis of the various items of evidence mentioned above, the Commission sees fit to map out the steps usually involved in the above-mentioned official policy of disappearances:

Detention of the victims

77. The Commission has been told that, in general, perpetration of the disappearances was delegated to the political military commanders and the commanding officers at military bases. The latter imparted orders directly to the personnel who carried out the detentions, normally the first stage of the disappearance process. Peru's national police force was also in charge of perpetrating disappearances, usually through DINCOTE.

78. Most often the abduction and disappearance of a person began with information obtained by members of the intelligence service, according to which that person was in some way linked to subversive groups, chiefly the Shining Path or the Tupac Amaru Revolutionary Movement (MRTA). It should be pointed out that in many instances the persons concerned were in no way involved with those subversive groups, but were unfortunate enough to have been included, fraudulently or by mistake, on the lists that would later lead to their disappearance.

79. Another factor that, in certain Departments and under particular circumstances, could lead to the detention and later disappearance of many people was the fact that they were not carrying their voter registration documents, which were used for identification purposes. In certain cases, during checkpoint operations on public thoroughfares, a person unable to produce an identification document upon request was almost automatically considered a terrorist.

80. Once a person was considered "suspect", he or she was arrested; on numerous occasions, this was the first step toward disappearance. Some arrests were carried out openly in public, others at the victim's home, usually in the early hours of the morning and in the presence of witnesses. Those charged with carrying out the detentions were heavily armed soldiers or police, sometimes dressed in civilian clothing, but most often in uniform.

81. Generally, the soldiers or police paid little attention to the witnesses and proceeded to do what they came to do anyway. Arrests in people's homes were usually carried out in front of whoever happened to be there: wives, children, fathers, mothers, etc. Thus the normal pattern was for the personnel to arrest the victim regardless of who might be present, with no attempt to hide the official nature of what they were doing.

Official denial of the detentions

82. The same day of the arrest, or in the days immediately following, relatives would go to the place where the victim was detained and be told that he or she was not being held. It should

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be stressed that since the arrests were usually carried out publicly, the relatives knew where the victim had first been detained. Nevertheless, the authorities denied the detention. As the Commission has established previously:

The fact that the military authorities deny having carried out the detention thus merely confirms the clandestine nature of the military operations. Detention is neither registered nor officially admitted, in order to make it possible to employ torture during interrogation and if need be to apply extrajudicial punishment to persons considered to be sympathizers, collaborators, or members of the rebel groups.[FN17]

[FN17] IACHR, Report Nº 40/97, paragraph 68 (cases 10.941 and Others, Peru), published in the 1997 Annual Report.

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83. A variation on this practice consisted of the authorities alleging that the victim had been released and even producing documents to show this, sometimes with a forgery of the victim's signature, others with his or her real signature obtained under torture, when in fact the release had never taken place.

Torture and extrajudicial execution of detainees

84. When the victim did not die as a result of the torture inflicted, he or she was generally executed in summary, extrajudicial fashion. The bodies were then hidden by burial in secret places chosen to make their discovery practically impossible.

Amnesty for those responsible for the disappearances

85. In general, cases of disappearance in Peru were not seriously investigated. In practice, those responsible enjoyed almost total impunity, since they were carrying out an official State plan. Despite that, the authorities decided to go even further by passing Act Nº 26.479 (the "Amnesty Act") in 1995. Article 1 of that Law grants a blanket amnesty to all members of the security forces and civilian personnel accused, investigated, indicted, prosecuted, or convicted for human rights violations committed between May 1980 and June 1995. That law was later strengthened by Act Nº 26.492, which prohibited the judiciary from ruling on the legality or applicability of the Amnesty Law. In its annual reports for 1996 and 1997, the Commission has addressed the issue of those amnesty laws in the overall analysis of the human rights situation in Peru.

86. Although the Commission has been told that both laws can be rendered inapplicable by Peruvian judges, through what is known as their "broad powers" to rule on the constitutionality of laws--provided for in Article 138 of the Peruvian Constitution--the Commission considers the aforesaid laws an invalid attempt to legalize the impunity that existed in practice with regard to forced disappearances and other serious offenses committed by agents of the State. For example, the Commission has learned that the judges of the Constitutional Court, who were removed by

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the Congress, invoked that same Article 138 of the Constitution in their December 27, 1996, finding that Act Nº 26.657 did not apply to President Alberto Fujimori.

C. The burden of proof regarding disappearances

87. The general principle is that, in cases of disappearance in which, in the Commission's view,[FN18] there is sufficient evidence that the arrest was carried out by State agents acting within the general framework of an official policy of disappearances, it shall be presumed that the victim's disappearance was brought about by acts by Peruvian State agents, unless that State gives proof to the contrary.

[FN18] The Commission considers it important to recall in this context that "the practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts." Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 130.

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88. Thus it is not incumbent upon the petitioners to prove that the victims have disappeared, because it may be assumed, for lack of proof to the contrary, that the Peruvian State is responsible for the disappearance of any person it has detained. This is even more important in view of the aforementioned government practice of causing disappearances. It is up to the State to prove that it was not its agents who brought about the disappearance of the victims.[FN19]

[FN19] Note, for instance, that in the Velásquez Rodríguez case the Court took into account the fact that the file contained no evidence whatsoever that Mr. Manfredo Velásquez Rodríguez had joined subversive groups, nor that he had been abducted by common criminals or by other persons not connected with the practice of disappearances in force in Honduras at the time, in determining whether his disappearance had been brought about by agents of the State. (Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 147(h).

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89. Indeed, the "policy of disappearances, sponsored or tolerated by the Government, is designed to conceal and destroy evidence of disappearances"[FN20]. Then, as a result of action by the State, the petitioner is deprived of evidence of the disappearance, since "this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim."[FN21] The fact is, as established by the Inter-American Court of Human Rights:

... in contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.[FN22]

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[FN20] The IACHR position mentioned in Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 124.
[FN21] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 131.
[FN22] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 135.

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90. The Commission has explained in this regard that when there is proof of the existence of a policy of disappearances sponsored or tolerated by the Government, it is possible, using circumstantial or indirect evidence, or through relevant logical inference, to prove the disappearance of a specific individual when that would otherwise be impossible given the link between that disappearance and the overall policy.[FN23]

[FN23] Idem, paragraph 124.

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91. More recently, the Commission has also determined that:

The burden of proof lies with the State, because when the State holds a person in detention and under its exclusive control, it becomes the guarantor of that person's safety and rights. In addition, the State has exclusive control over information or evidence regarding the fate of the detained person. This is particularly true in a disappearance case where, by definition, the family members of the victim or other interested persons are unable to learn about the fate of the victim.[FN24]

[FN24] IACHR. Report Nº 3/98. Case 11.221 (Colombia), 1997 Annual Report, paragraph 62.

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92. This establishes the inversion of the burden of proof for cases of disappearance in Peru and the effects of that inversion on cases being heard by the Commission.

D. Considerations relating to forced disappearances

93. The General Assembly of the Organization of American States (OAS) has called the practice of the forced or involuntary disappearance of persons a crime against humanity that strikes against the fundamental rights of the human individual, such as personal liberty and well-being, the right to proper judicial protection and due process, and even the right to life.[FN25] In that context, the member states of the Organization of American States (OAS) adopted, in 1994, an Inter-American Convention on the Forced Disappearance of Persons[FN26] as a means of preventing and punishing the forced disappearance of persons in our Hemisphere.

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[FN25] Resolution AG/RES. 666 (XIII-O/83) of the General Assembly of the Organization of American States.
[FN26] Peru has neither signed, ratified, nor acceded to this convention.
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94. The Commission has affirmed, in relation to the forced disappearance of persons, that:

This procedure is cruel and inhuman. ... [It] not only constitutes an arbitrary deprivation of freedom but also a serious danger to the personal integrity and safety and to even the very life of the victim. It leaves the victim totally defenseless, violating the rights to a fair trial, to protection against arbitrary arrest, and to due process.[FN27]

[FN27] IACHR, Ten Years of Activities, 1971-1981, OAS, 1982, p. 319.
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95. The UN Working Group on Enforced or Involuntary Disappearances has affirmed that the forced or involuntary disappearance of a person is a particularly odious violation of human rights, and is a doubly paralyzing form of suffering: for the victims, frequently tortured and in constant fear for their lives, and for their family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come. The victims are well aware that their families do not know what has become of them and that the chances are slim that anyone will come to their aid. Having been removed from the protective precinct of the law and "disappeared" from society, they are in fact deprived of all their rights and are at the mercy of their captors. If death is not the final outcome and they are eventually released from the nightmare, the victims may suffer for a long time from the physical and psychological consequences of this form of dehumanization and from the brutality and torture which often accompany it.

The family and friends of disappeared persons experience slow mental torture, not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health. Aware, furthermore, that they too are threatened; that they may suffer the same fate themselves, and that to search for the truth may expose them to even greater danger.

The family's distress is frequently compounded by the material consequences resulting from the disappearance. The missing person is often the mainstay of the family's finances. He or she may be the only member of the family able to cultivate the crops or run the family business. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search. Furthermore, they do not know when--if ever--their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to receive pensions or other means of support in the absence of a certificate of death. Economic and social marginalization is frequently the result.[FN28]

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[FN28] UN Human Rights. Enforced or Involuntary Disappearances. Fact Sheet Nr. 6 (Rev. 2), Geneva, 1997, pages 1 and 2.

E. ESTABLISHED FACTS

96. As established in the previous section, the general principle is that, in cases of disappearance in which there is sufficient evidence, in the Commission's judgment, that the detention was presumably carried out by State agents in the overall framework of an official policy of disappearances, the Commission shall presume that the victim was "disappeared" by agents of the Peruvian State, unless that State has proven the contrary.

97. Thus, from the facts of the case according to the petitioners, from the testimony of eyewitnesses to the detentions, and from the remaining evidence in the respective files, including copies of the domestic procedures and appeals undertaken to locate and secure the release of the victims, as well as copies of the reports prepared by the military itself, denying that the arrests were carried out by military personnel, in addition to the fact that those detentions occurred in the Department of Ayacucho, where anti-subversive activities were being carried out at the time of the events, the Commission concludes that it has sufficient material to establish the veracity of the complaints, in respect of the detention of the victims.

98. Thus, bearing in mind also that the Peruvian State has not carried out any genuine investigation of these serious events or produced evidence to show that State agents were not responsible for the detention and subsequent disappearance of the victims,[FN29] the Commission concludes that those victims were "disappeared" by the Peruvian State, acting through its agents.

[FN29] The Commission considers it relevant here to cite a recent report in which it established, in a case of disappearance of a detainee, that "the Colombian State has failed to meet its burden of proving that State agents did not disappear Mr. Medina… The State has failed to provide any legal or factual arguments, and has offered no evidence, to support an assertion that State agents did not disappear Mr. Medina." IACHR, Report Nº 3/98 (Case 11.221), op.cit., paragraph 63.

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99. On the basis of the foregoing arguments, the Commission concludes that:

a. The events surrounding the detention and subsequent disappearance of Mr. William León Laurente, (Case 10.807) at the hands of Peruvian Army personnel, on December 21, 1989, as described in detail in paragraphs 2-5 of this Report, did indeed take place.

b. The events surrounding the detention and subsequent disappearance of Mr. Alfonso Aguirre Escalante, (Case 10.808) at the hands of Peruvian Army personnel, on February 8, 1990, as described in detail in paragraphs 9-12 of this Report, did indeed take place.

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c. The events surrounding the detention and subsequent disappearance of Mr. Eladio Mancilla Calle, (Case 10.809) at the hands of Peruvian Army personnel, on June 6, 1990, as described in detail in paragraphs 16-20 of this Report, did indeed take place.

d. The events surrounding the detention and subsequent disappearance of Mr. Constantino Saavedra Muñoz, (Case 10.810) at the hands of Peruvian Army personnel, on October 1, 1990, as described in detail in paragraphs 24-31 of this Report, did indeed take place.

e. The events surrounding the detention and subsequent disappearance of Mr. Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe and Luis Amaru Quispe (Case 10.879) at the hands of Peruvian Army personnel, on April 19, 1991, as described in detail in paragraphs 35-43 of this Report, did indeed take place.

f. The events surrounding the detention and subsequent disappearance of Mr. Honorato Laura Luján (Case 11.037) at the hands of Peruvian Army personnel, on June 7, 1990, as described in detail in paragraphs 47-51 of this Report, did indeed take place.

100. Those detentions and subsequent disappearances followed a characteristic pattern: detention of the victims by military personnel either in uniform or dressed in civilian clothing, but in either case identifiable as military by the weapons they were carrying and other characteristics; official denial of responsibility for the disappearances; failure by the public authorities to investigate the situation of the victims; ineffectiveness of the appeals filed; torture and, possibly, extrajudicial execution of the victims; and absolute impunity, reinforced subsequently by an amnesty.

F. Violation of the human rights of the victims

101. The Commission will now analyze the specific violations by the Peruvian State of rights protected by the Convention, involved in the disappearances of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján.

Right to Personal Liberty (Article 7 of the Convention)

102. A detention is arbitrary and illegal when not carried out for the reasons, and according to the formalities, established by law; when carried out without adherence to the standards established by law; and when it involves misuse of the authority to arrest--in other words, when carried out for purposes other than those envisaged and stipulated by law. The Commission has also pointed out that detention for improper ends is, in itself, a form of penalty without due process, or extralegal punishment, which violates the guarantee of a fair trial.

103. In this case, the Peruvian citizens William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma

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Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján.were detained illegally and arbitrarily by Peruvian Army personnel between April 1990 and November 1991, in Ayacucho. The file also shows that the military authorities have systematically denied having detained them.

104. It is necessary to recall the circumstances in Peru at that time, which generally affected most of the Departments where detentions and disappearances occurred. Continuous raids by armed groups had generated permanent unrest in the local population. For that reason, a "state of exception" had been declared in various Departments, which was, prima facie, justified by the crisis faced by the Peruvian State in fighting terrorism. By virtue of that state of emergency, in numerous Departments Article 2(20)(g)[FN30] of the 1979 Constitution had been suspended, which meant that the military was legally empowered to detain a person without a warrant from a competent judge, even if an individual was not being caught in flagranti.

[FN30] According to which every person has the right: Art. 20: .. to personal liberty and security. Consequently, (g) No one shall be detained except with a justified, written order or by police officers in flagrante delicto

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105. Despite the prima facie legality of this measure, the security forces are not thereby entitled, without restrictions, to detain citizens arbitrarily. The suspension of the judicial warrant requirement for detention does not mean that public officials are exempted from observing the legal requirements for such detentions, nor does it annul jurisdictional controls over the manner in which detentions are carried out.

106. The suspension of the right to personal liberty authorized in Article 27 of the American Convention on Human Rights can never be absolute. There are basic principles at the heart of any democratic society that the security forces must respect in order to carry out a detention, even in a state of emergency. The legal prerequisites for detention are obligations that State authorities must respect, in keeping with their international commitment under the Convention to protect and respect human rights.

107. Secondly, in accordance with those principles, preventive detention by the military or police must be designed solely to prevent the escape of a person suspected of having committed a crime and thereby ensure his appearance before a competent court, either for trial within a reasonable period of time or for his release. No State may impose a sentence without a trial.[FN31] In a constitutional, democratic State in which the rule of law and the separation of powers are respected, all penalties established by law should be imposed by the judiciary after guilt has been established in a fair trial with all the procedural guarantees. The existence of a state of emergency does not authorize the State to disregard the presumption of innocence, nor does it confer upon the security forces the right to exercise an arbitrary and unlimited ius puniendi.

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[FN31] The Commission has established that: The rationale behind this guarantee is that no person should be punished without a prior trial which includes a charge, the opportunity to defend oneself, and a sentence. All these stages must be completed within a reasonable time. The time limit is intended to protect the accused with respect to his or her fundamental right to personal liberty, as well as the accused personal security against being the object of an unjustified procedural risk. (IACHR, Report Nº 12-96, para. 76 (Case 11.245, Argentina), published in the 1995 Annual Report.

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108. On this subject, Article 7(5) of the American Convention establishes that "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released...." Paragraph 6 of that article adds: "Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention (...)". The Commission has also stated that anyone deprived of his liberty must be kept in an officially recognized detention center and brought, without delay, in accordance with domestic legislation, before a competent judicial authority. Should the authority fail to comply with this legal obligation, the State is duty-bound to guarantee the detainee's right to apply for an effective judicial remedy to allow judicial verification of the lawfulness of his detention.

109. The Commission concludes that the Peruvian State is responsible for violating the right to personal liberty and security by arbitrarily imprisoning Peruvian citizens William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján; for violating their right of recourse to a competent judge or court that would rule on the lawfulness of their arrest; and, thereby, for violating Article 7 of the American Convention on Human Rights.

Right to Humane Treatment (Article 5 of the Convention)

110. Since forced disappearance involves violation of multiple rights, violation of the right to humane treatment is implicit in the cases of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján.

111. In this regard, the Court has stated that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being. Such treatment, therefore, violates Article 5 of the Convention, which recognizes the right to the integrity of the person....."[FN32]

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[FN32] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 156.

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112. Accordingly, the Commission, on the basis of the facts presented, is convinced, by way of presumptive evidence, that the detainees were tortured. The circumstances in which the victims were detained, kept hidden, isolated, and in solitary confinement, and their defenselessness as a result of being denied and prevented from exercising any form of protection or safeguards of their rights make it perfectly feasible for the armed forces to have tortured the victims with a view to extracting information about subversive groups or units. Accordingly, the Commission concludes that the Peruvian State violated the rights guaranteed to the victims under Article 5 of the Convention.

Right to Life (Article 4 of the Convention)

113. The Inter-American Court of Human Rights has stated that the forced disappearance of persons "often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention...". The Court also ruled that the fact that a person has disappeared for seven years creates a reasonable presumption that he or she was killed.[FN33]

[FN33] Idem paragraphs 157 and 188.

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114. In the cases of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, the above-mentioned testimony, indicia, and other evidence show that they were detained by State agents, which is enough to establish the presumption that they were also "disappeared" by state agents.

115. There is sufficient evidence to support the presumption that Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján are dead--given that approximately seven years have elapsed since their detention and disappearance--and for the presumption that those responsible are agents of the State.

116. Therefore, the Commission finds that the Peruvian State violated the victims' right to life, a fundamental right protected under Article 4 of the Convention, which states that "Every person has the right to have his life respected... No one shall be arbitrarily deprived of his life."

Right to Juridical Personality (Article 3 of the Convention)

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117. Article 3 of the American Convention on Human Rights establishes that every person has the right to recognition as a person before the law. When Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján were detained and then "disappeared" by State agents, they were excluded from the legal and institutional framework of the Peruvian State. In that sense, the forced disappearance of persons constitutes the negation of their very existence as human beings recognized as persons before the law.[FN34]

[FN34] Article 1(2) of the declaration regarding protection of persons from forced disappearances defines disappearance as a violation of the norms of international law guaranteeing every human being the right to recognition as a person before the law. UN General Assembly resolution 47/133, December 18, 1992.

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118. Thus, the Commission finds that Peru violated the victims' right to recognition as persons before the law, enshrined in Article 3 of the Convention.

Right to Judicial Protection (Article 25 of the Convention)

119. From the information provided by the parties, it is clear that the Peruvian State has not complied with its obligation to investigate the facts of this case and initiate judicial proceedings.

120. The Inter-American Court of Human Rights has stated that the principles of international law "refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in article 46(2)."[FN35] It has also made it clear that the failure to provide effective, not merely formal, judicial remedies not only entails an exception to the rule that domestic remedies must be exhausted, but also constitutes a violation of Article 25 of the Convention.[FN36]

[FN35] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph 63.

[FN36] Inter-American Court of Human Rights, Velásquez Rodríguez case. Preliminary objections.

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121. The writs of habeas corpus were completely ineffective in accomplishing their purpose. Criminal procedures under Peruvian domestic were merely formal and meaningless red tape and the investigations failed to provide even minimal indications of who had been responsible for the detention and subsequent disappearance of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio

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Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján.

122. Peruvian law establishes that in all cases of offenses against the public order, the Office of the Attorney General represents both the State and the victim. The Office of the Attorney General is obligated to participate in investigating and prosecuting the crime. Consequently, it should promote and undertake whatever action may be required (provision of evidence, inspections, or any other) to establish the veracity of the complaint, to identify those responsible, if applicable, and to bring criminal charges against them.

123. The jurisprudence of the Inter-American Court of Human Rights confirms the provisions of domestic law when it refers to the obligation of States and says, with regard to the previous point, that "The State has a legal duty (...) to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation."[FN37]

[FN37] Inter-American Court of Human Rights, Velásquez Rodríguez case July 29, 1988), op.cit., paragraph 174.

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124. The State must not evade, under any pretext, its duty to investigate a case involving violation of fundamental human rights. The Court says as much when it states that "the investigation... must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the... family... without an effective search for the truth by the government."[FN38]

[FN38] Idem, paragraph 177.

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125. The right to be brought before a competent judge is a fundamental safeguard for the rights of any detainee. As the Inter-American Court of Human Rights has stated, judicial supervision of detention, through habeas corpus, "performs a vital role in ensuring that a person’s life and physical integrity are respected, in preventing his disappearance or the keeping of his whereabouts secret and in protecting him against torture or other cruel, inhumane, or degrading punishment or treatment."[FN39]

[FN39] Inter-American Court of Human Rights, Habeas Corpus in Emergency Situations (Articles 27(2), 25(1) and 7(6), American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A Nr. 8, paragraph 35.

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126. Precisely for that reason, Article 27 of the American Convention on Human Rights has established that essential judicial guarantees safeguarding certain fundamental rights cannot be suspended. As the Inter-American Court of Human Rights has ruled, "from Article 27 (1), moreover, comes the general requirement that in any state of emergency there be appropriate means to control the measures taken, so that they are proportionate to the needs and do not exceed the strict limits imposed by the Convention or derived from it."[FN40]

[FN40] Inter-American Court of Human Rights, Judicial Guarantees in State of Emergency (Articles 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A Nr. 9, paragraph 21.

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127. The Court has also stated that the judicial nature of those means presupposes "the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency[FN41] and that "it must also be understood that the declaration of a state of emergency" whatever its breadth or denomination in internal law "cannot entail the suppression or ineffectiveness of the judicial guarantees that the Convention requires States Parties to establish for the protection of the rights not subject to derogation or suspension by the state of emergency."[FN42]

[FN41] Inter-American Court of Human Rights, Habeas Corpus in Emergency Situations, op.cit., paragraph 30.
[FN42] Inter-American Court of Human Rights, Judicial Guarantees in State of Emergency, op.cit., paragraph 25.

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128. According to the Inter-American Court of Human Rights, this also includes the right to a fair trial enshrined in Article 8, which "includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination."[FN43] The Court concluded that "the principles of due process of law cannot be suspended in states of exception insofar as they are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees."[FN44]

[FN43] Idem, paragraph 28.
[FN44] Ibidem., paragraph 30.

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129. Such a lack of access to effective domestic remedies against acts that violate fundamental rights constitute a violation by the Peruvian State of Articles 8 and 25 of the Convention.

Obligation to respect and guarantee rights

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130. In this case, it has been shown that the Peruvian State failed to comply with the obligation, set forth in Article 1(1) of the Convention, "to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms," because it violated rights established in Articles 3, 4, 5, 7, and 25 of the Convention.

131. The first obligation of States, under Article 1(1) of the Convention, is to respect the rights and freedoms of all persons subject to their jurisdiction. With regard to this obligation, the Court ruled that "under international law a State is responsible for the acts of its agents' and for their omissions, even when those agents act outside the sphere of their authority or violate internal law". It ruled also that "any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State."[FN45]

[FN45] Inter-American Court of Human Rights, Velásquez Rodríguez case, op.cit., paragraph s170 and 172.

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132. The Commission concludes that the forced disappearance of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján were acts perpetrated by agents of public authorities, and that, therefore, the Peruvian State violated the rights of those victims, enshrined in Article 1(1) of the Convention, in relation to violations of Articles 3, 4, 5, 7, and 25 of the Convention.

133. The second obligation set forth in Article 1(1) is to ensure free and full exercise of the rights and freedoms recognized in the Convention. On this the Court's jurisprudence establishes that: "This obligation implies the duty of the States Parties to organize the governmental apparatus, and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, States must prevent, investigate, and punish any violation of the rights recognized by the Convention …"[FN46]

[FN46] Idem, paragraph 166.

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134. In the event of a "forced disappearance", the State is obligated to ascertain the whereabouts and situation of the victim, punish those responsible, and make reparation to the family members. In the case at hand, these obligations have not been met. Therefore, the Commission concludes that the Peruvian State has violated Article 1(1) of the Convention by failing to ensure the exercise of the rights and guarantees of the individuals involved.

VII. CONSIDERATIONS WITH RESPECT TO THE RESPONSE OF THE STATE

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135. The Commission approved Report Nº 67/98 (Article 50) on the instant case on September 30, 1998, at its 100th session. The aforesaid report enclosing the Commission's recommendations was forwarded on October 20, 1998, to the Peruvian State, which was given two months in which to comply with the recommendations, counted from the date of sending the report.

136. The State conveyed to the Commission its responses to Report No 67/98 by means of note Nº 7-5-M/569, of December 20, 1998. In the aforesaid responses the State expressed various considerations explaining its disagreement with aspects of fact and law contained in the aforementioned report, as well as with the conclusions that the Commission reached. Thus, for instance, the State questioned the considerations on admissibility contained in the aforesaid report, especially in relation to the Commission's conclusion with respect to there having existed the practice or policy of causing disappearances that rendered petitions for habeas corpus ineffective, and which, in consequence, made it unnecessary to pursue such a procedure in order to exhaust the remedies under domestic law. The State also alleged that the terrorist violence that affected Peru generated a series of situations that clearly altered the normal course of development of Peruvian society and that "the issue of disappearances has been used to question that process which has made it possible to achieve great progress in the pacification of the country". The State mentioned reports by the Commission and by other international organizations in which reference was made to the violence and terror that characterized the activities of the dissident groups, and added that although the Shining Path did not, generally speaking, cause people to disappear, it is possible that many people taken as disappeared in actual fact may have joined the aforesaid group.

137. The State affirmed in its responses that "although, in the course of the counter-subversive struggle, cases were recorded of excesses or abuses committed by members of the security forces--cases that were investigated and punished--there has never existed a systematic or officially sanctioned practice of forced disappearances". At the same time the State added that the situation of extreme violence that devastated Peru made the task of investigating individual complaints very complex, a situation aggravated inasmuch as "the majority of complaints are incomplete, the spelling of the name flawed, the circumstances of the disappearance vague, and the date and place thereof imprecise", added to which is the fact that the terrorist groups tried to present the armed force as the sole originators of mass violations of human rights.

138. Peru replied furthermore that it cannot be charged with transgression of the right to personal liberty enshrined in Article 7 of the Convention, since that right was suspended, pursuant to the provisions of Article 27 of the American Convention, on grounds of there having arisen a situation of "emergency that threatens the independence or security of a State Party" as referred to in the said Article.

139. The Government said that the accumulation of cases by the IACHR is not in conformity with its Regulations. It added that the Government may conclude that there is an antiterrorist campaign, but not a policy of forced disappearances, and that in any event the report in question failed to mention that the forced disappearance and execution of persons constitute terrorist practices. Peru also denied that torture by Government agents had been a common practice. The

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Government further argued that in accordance with Article 41 of the Convention, "the function of the IACHR is to seek redress, but not of a punitive nature." Hence, in the opinion of the Peruvian Government, it should not matter to the Commission that the amnesty laws eliminate the punitive function of the Government, but only whether said laws eliminate its responsibility to compensate victims for damages.

140. Finally, the State ratified arguments and evidence that it offered throughout the proceedings before the Commission, stated its discrepancy in respect of the Commission's conclusions that Peruvian army personnel arrested and caused the victims to disappear and mentioned a number of considerations regarding the recommendations made to it by the Commission.

141. As for the Commission's recommendation that the Government conduct a serious and impartial investigation into the facts surrounding the disappearance of the victims, the government responded that the investigation which was conducted at the time was serious and impartial, and so that recommendation had already been carried out. The Government further stated that during the most critical period of terrorist activity, there was a period of special hardship that made it impossible to determine the whereabouts of persons who in many cases had disappeared at the hands of subversive groups.

142. As regards the Commission's recommendation that the Government set aside any domestic measure, either legislative or of any other nature, that would tend to prevent the investigation, prosecution, and punishment of the persons responsible for the detention and disappearance of the victims, and especially amnesty laws Nos. 26479 and 26492, the Government asserted that said laws were in keeping with the Peruvian Constitution, and added that the IACHR did not have authority to request the derogation of an internal law.

143. In relation to the Commission's recommendation that the State provide compensation to the relatives of the victims, Peru responded that it deems such a recommendation to be out of order, since "the responsibility of agents of the Peruvian State has not been ascertained".

144. With respect to the Commission's recommendation that the Government adhere to the Inter-American Convention on the Forced Disappearance of Persons, Peru replied that such an act was a manifestation of sovereignty to be performed by the Peruvian Congress, and it added that the Peruvian Government had included in its domestic law certain provisions related to the forced disappearance of persons as a human rights violation. The Government further stated that it had taken note of that recommendation.

145. The Commission abstains from analyzing the repetition by the Peruvian State of arguments made prior to adoption of the aforementioned Report Nº 67/98 and its statements of disagreement with that report, since, pursuant to the provisions of Article 51(1) of the Convention, what the Commission must determine at this stage of the proceedings is whether or not the State has resolved the matter.

146. The Commission must insist, nonetheless, that pursuant to the provisions of Article 27(3) of the American Convention, states parties can, under certain conditions and circumstances,

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suspend exercise of the right to personal liberty enshrined in Article 7 of the Convention. Nevertheless, as was mentioned above, power to arrest does not grant the security forces unlimited powers enabling them to arrest people arbitrarily. Suspension of the guarantee of personal liberty, authorized by Article 27 of the American Convention on Human Rights, can never be total. There are underlying principles in all democratic societies that the security forces must observe in order to formalize an arrest, even under states of emergency. The legal prerequisites of an arrest are obligations that all state officials must respect in compliance with the international commitment acquired under the Convention to protect and respect human rights. Furthermore, based on the foregoing principles, the sole purpose of police or military arrest, as a precautionary measure, must be to prevent the flight of a person suspected of a criminal act, and thus ensure his appearance before a competent judge, in order to be brought to trial within a reasonable time or, as the case may be, released. On no account does Article 27 of the Convention permit a person to be detained by agents of the state with the purpose of being made to disappear.

147. As regards Peru's assertion, based on Article 41 of the Convention, to the effect that "the functions of the IACHR were to seek redress, but not of a punitive nature," and so it should not matter to the Commission whether amnesty laws eliminated the punitive function of the state, but only whether said laws eliminated its responsibility to compensate victims for damages, it is the opinion of the Commission that this statement has no legal merit. In fact, Article 41(f) of the Convention empowers the Commission to take action on petitions, pursuant to its authority under the provisions of Article 44 through 51 of the Convention. Article 50(3) of the Convention further establishes that the Commission may make such proposals and recommendations as it sees fit. In the case in point, if the Peruvian government has adopted laws that prevent it from punishing government agents responsible for the disappearance of victims, the Commission is perfectly entitled to recommend to the Government that it set aside said laws and proceed to punish the persons responsible for the disappearances.

148. As to compliance with the recommendations that the Commission made to the Peruvian State in the aforementioned Report Nº 67/98, the Commission finds that the State has failed to comply with any of the recommendations the Commission made. The only concrete affirmation regarding the State's alleged compliance with one of the Commission's recommendations refers to its submission that the investigation that it carried out at the time in question, which concluded that the armed forces are not responsible for the disappearances of the victims, was a serious and impartial investigation, and that, therefore, it would seem already to have fulfilled the Commission's recommendation on that score. The Commission must point out to the Peruvian State that those investigations were carried out several years before adoption on September 30, 1998, of the aforementioned Report Nº 67/98 by the Commission. The Commission subsequently would have deemed the investigations conducted by the State serious and impartial had the State found and punished the guilty parties and not granted them an amnesty, instead of basing its conclusions on a question of fact, namely that agents of the State were not responsible for the disappearances.

149. With respect to the submission by Peru that the amnesty laws are in keeping with the Peruvian Constitution, the Commission considers it important to remind the Peruvian State that in ratifying the American Convention on Human Rights on July 28, 1978, it undertook the

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obligation to respect and ensure to all the inhabitants of that country the rights enshrined therein. Accordingly, and pursuant to the provisions of Article 27 of the Convention of Vienna on the Law of Treaties, the Peruvian State may not invoke the provisions of its internal law as justification for its failure to perform the obligations it undertook in ratifying the American Convention on Human Rights. Over the years, the Commission has ruled in a number of key cases in which it was able to express its point of view and firm up its doctrine on the application of amnesty laws. These rulings have uniformly stated that both amnesty laws and comparable legislative measures that impede or stop the investigation and prosecution of government agents who may be responsible for serious violations of the Convention or the American Declaration are in violation of multiple provisions of these instruments.[FN47] This doctrine has been confirmed by the Inter-American Court of Human Rights, which has established that it is the duty of the States Parties "to investigate human rights violations, prosecute those responsible and avoid impunity."[FN48] The Court has defined impunity as the lack of investigation, prosecution, capture, trial, and conviction of those responsible for human rights violations and has affirmed that States have the obligation to use all the legal means at their disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.[FN49] The States Parties to the American Convention may not invoke provisions of domestic law, such as amnesty law, to avoid complying with their obligation to guarantee that justice is fully and duly served.[FN50]

[FN47] Report 28/92, Argentina, Annual Report of the IACHR 1992-1993, paragraph 41 Report 29/92, Uruguay, Annual Report of the IACHR 1992-1993, paragraph 51; Reports 34/96 and 36/96, Chile, Annual Report of the IACHR 1996, paragraphs 76 and 78 respectively; Report 25/98, Chile, Annual Report of the IACHR 1997, paragraph 71; and Report 1/99, El Salvador, Annual Report of the IACHR 1998, paragraph 170.

[FN48] I-A Court of Human Rights, Loayza Tamayo Case, Judgment on Reparations of November 27, 1998, paragraph 170.

[FN49] I-A Court of Human Rights, Paniagua Morales et al. Case, Judgment on the Merits of March 8, 1998, Series C, No. 37, paragraph 173.

[FN50] I-A Court of Human Rights, Loayza Tamayo Case, Judgment on Reparations of November 27, 1998, paragraph 168.

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150. Concerning the recommendation made by the Commission that Peru provide compensation to the victims' relatives, in respect of which the State claims to be unable to do so because the responsibility of agents of the Peruvian State has not been ascertained, it is observed that the Commission, in exercise of the powers conferred on it by the States themselves, the Peruvian State included, ascertained that the Peruvian State is responsible for the disappearance of the victims. By virtue of the foregoing, the argument of not providing compensation to the victims based on the assertion that responsibility for the aforesaid disappearances has not been ascertained is groundless, since, as was established, the party responsible for those disappearances is the Peruvian State.

151. In relation to the recommendation that Peru adhere to the Inter-American Convention on Forced Disappearance of Persons, which the State maintains entails a manifestation of

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sovereignty that pertains to the Peruvian Congress, the Commission observes that compliance with that recommendation precisely entails that the State pursue the pertinent internal procedures for Peru to become party to the said Convention, as another element intended to attempt to prevent future repetition of cases of forced disappearance in Peru.

VIII. CONCLUSION

152. On the basis of the evidence on file, the Commission concludes that Peruvian Army personnel deployed in the Department of Ayacucho proceeded to illegally detain, and bring about the disappearance of, Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, for which reason the Peruvian State is responsible for violating the right to juridical personality (Article 3), the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), and the right to judicial protection (Article 35), enshrined in the American Convention on Human Rights. It has also failed to comply with its overall obligation to respect and ensure the exercise of these rights, which are enshrined in the Convention, as stipulated in Article 1(1) thereof.

IX. RECOMMENDATIONS

On the basis of the analysis and conclusion set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE PERUVIAN STATE THAT IT:

1. Initiate a serious, impartial, and effective investigation of the facts in order to establish the whereabouts of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, and to identify those responsible for their detention and disappearance, in order that those responsible be sentenced, in appropriate criminal proceedings, to punishments established by law and commensurate with the gravity of the above-mentioned violations.

2. Suspend any domestic measure, whether legislative or of any other sort, designed to hinder the investigation, indictment, and punishment of those responsible for the detention and disappearance of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján. To that end, the State should repeal Acts Nos. 26479 and 26492.

3. Grant appropriate reparations to the relatives of Messrs. William León Laurente, Alfonso Aguirre Escalante, Eladio Mancilla Calle, Constantino Saavedra Muñoz, Zenón Huamaní

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Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamaní Quispe, Luis Amaru Quispe and Honorato Laura Luján, including payment of compensation for the suffering caused by the lack of information on the whereabouts of the victims.

4. Accede to the Inter-American Convention on the Forced Disappearance of Persons.

X. PUBLICATION

153. On March 3, 1999, the Commission transmitted Report Nº 14/99--the text of which precedes--to the Peruvian state and to the petitioners, according to article 51(2) of the Convention, and granted Peru a one month period to comply with the recommendations set above. The State did not respond within the specified time.

154. According to the above considerations, and to Articles 51(3) of the American Convention and 48 of the Commission's regulations, the Commission decides to reiterate the conclusion set forth in chapter VIII supra; to reiterate the recommendations set forth in chapter IX supra; to make public the present report and to include it in its Annual Report to the OAS' General Assembly. The Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the Peruvian State in respect to the above recommendations, until they have been fully complied with by the Peruvian State.

Approved by the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 13 day of the month of April, 1999. (Signed): Robert K. Goldman Chairman; Hélio Bicudo First Vice Chairman; Claudio Grossman, Second Vice Chairman; Commissioners Alvaro Tirado Mejía and Jean Joseph Exumé.