I. BACKGROUND

1. Complaints received by the Inter-American Commission on Human Rights (hereinafter "the Commission") between February 4, 1991, and March 8, 1993, alleged that the Republic of Peru (hereinafter "the State" or simply "Peru") violated the human rights of Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, when Peruvian Army soldiers wrongfully detained them in the Department of Huánuco and then caused their disappearance. The petitioners allege that in causing those disappearances the State violated the above-mentioned victims the right to life, as well as other rights enshrined in the American Convention on Human Rights (hereinafter "the Convention").[FN1]

[FN1] Bearing in mind that the facts alleged in the six cases under review are essentially similar, because they are connected in origin, were reported in regard to the same region and in the same period, were attributed to soldiers, and followed a pattern of behavior indicating a State policy, the Commission has decided, in accordance with Article 40(2) of its Regulations, to combine them and process them jointly.

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

A. Detention and disappearance of Juan de la Cruz Nuñez Santana - case 10.815

Facts of the case

2. Juan de la Cruz Núñez Santana, age 30, and married to Elsa Ruth Poma de Núñez, was a salesman, dealing mainly in tires. He worked as a traveling salesman in the central jungle area for a Huancayo-based company called "Distribuidora Victoria". On the morning of April 11, 1990, Mr. Núñez Santana traveled to Uchiza, to do business in the town. Having completed his transactions, Mr. Núñez Santana boarded a pickup truck together with other passengers for the return trip to Huancayo.

3. When the truck they were traveling in broke down, and thinking there was no chance of continuing by road, Mr. Núñez Santana, together with Reynaldo Palomino Huayza and Laura and Lourdes Bong, decided to take a boat to Ramal de Aspuzana, from where they would continue on to Huancayo. The four of them boarded a motorboat at the river port of Yanajanca. When they reached Ramal de Aspuzana at about 7:30 p.m., they were detained by Peruvian Army soldiers based in Ramal and taken to the Leoncio Prado Military Base, located in Leoncio Prado Province, in the Department of Huánuco.

4. That same evening, at 8:00 p.m., Laura and Lourdes Bong were released, but Mr. Núñez Santana and Mr. Palomino Huayza were not. For that reason, Mr. Núñez Santana's wife, Mrs. Elsa Ruth Poma de Núñez, went to the military base in Ramal and spoke to the officer in charge, Peruvian Army Lieutenant Colonel Miguel Rojas García, who confirmed that her husband had been detained but claimed that he had been released that same day. But Mr. Núñez Santana has never reappeared.

5. Mr. Núñez Santana's relatives applied numerous times to local and national authorities for the victim's release. In most of those efforts, they were assisted by APRODEH, a nongovernmental organization. Complaints were lodged with the Attorney General, the Chief Prosecutor of Huánuco, and the Office of the Provincial Prosecutor. The only outcome was that, on June 12, 1990, the Ministry of Defense sent official note Nº 115-B/BCS-313, signed by Lieutenant Colonel Miguel Rojas García, to the Provincial Prosecutor of the First FPM-LP in Tingo María, reiterating that Mr. Núñez Santana had been released on the same day he was detained.

Processing by the Commission

6. On March 14, 1991, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State replied on November 29, 1991. On January 29, 1992, the petitioner presented his observations regarding the State's reply. Peru presented additional information on February 25 and March 13, 1997.

Friendly settlement

7. On May 26, 1998, both parties were asked for current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. On July 31, 1998, the State ratified its previous arguments, maintained that the case was not admissible because domestic legal remedies had not been exhausted, and stated that in its view it would be inappropriate to initiate friendly settlement proceedings. The petitioner did not reply.

Position of the State

8. In its reply dated November 29, 1991, Peru alleged that Mr. Núñez Santana had not been detained by law enforcement officers on the Huallaga River front. In the additional information it supplied on February 25, 1997, the State alleged that, since Mr. Núñez Santana had been released on the same day, he was not considered a detainee, which would explain the contradiction referred to by the petitioner whereby the State alleged that it had not detained the victim while at the same time admitting that he had been released. On March 13, 1997, the State alleged that the Attorney General's Office had received no complaint regarding the detention of Mr. Núñez Santana. On July 31, 1998, the State argued that the case was inadmissible for lack of exhaustion of domestic remedies.

B. Detention and disappearance of Mr. Wilian Guerra González - Case 10.905

Facts of the case

9. Mr. Wilian Guerra González, age 30, was from the Province of Leoncio Prado in the Department of Huánuco. He lived with Mrs. Nelly Malqui, with whom he had two children.

10. At approximately 11:00 p.m. on May 17, 1991, Mr. Wilian Guerra González was detained at his home in Jirón Mariátegui in the Aucuyacu District, Leoncio Prado Province, Department of Huánuco, by Peruvian Army soldiers from the Aucuyacu Military Base. The arrest took place in the presence of Mr. Wilian Guerra González's father, Mr. Milcíades Guerra Ramírez. Following his detention, Mr. Wilian Guerra González was taken to the Military Base in Aucuyacu, where personnel later denied having held him there.

11. Mr. Wilian Guerra González's relatives applied numerous times to local and national authorities for the victim's release. In most of those efforts, they were assisted by CEAPAZ, a nongovernmental organization. A complaint was lodged with the Provincial Prosecutor for Leoncio Prado on June 6, 1991. Complaints were also presented to the Chief Prosecutor of Huánuco and the Special Attorney for Human Rights in Huánuco. The only outcome of those complaints was that, on January 21, 1992, the Office of the Attorney General issued official note Nº 049-92-MP-FN-FEDPDH-DH, stating that the case was being investigated. Meanwhile, on June 6, 1991, a writ of habeas corpus was filed, the only result of which was that the Court of First Instance of Leoncio Prado confirmed the identity of the person who filed the writ.

Processing by the Commission

12. On June 24, 1991, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State replied on November 8, 1991. On January 27, 1992, the petitioner presented his observations regarding the State's reply. Both parties presented additional communications: the State on December 15, 1992, and the petitioner on January 26, 1993.

Friendly settlement

13. On June 1, 1998, both parties were asked to provide the Commission with current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. The petitioner replied on June 16, 1998, saying that he was prepared to enter into a friendly settlement process as long as the State was willing to meet certain conditions. On July 31, 1998, the State ratified its previous arguments, maintained that the case was inadmissible, and stated the view that it would be inappropriate to initiate friendly settlement proceedings.

Position of the State

14. In its reply dated November 8, 1991, Peru alleged that Mr. Wilian Guerra González had not been detained by law enforcement officers on the Huallaga River front, a position it reiterated in a communication dated December 15, 1992. On July 31, 1998, the State argued that the case was inadmissible.

C. Detention and disappearance of Mr. Raúl Naraza Salazar - Case 10.981

Facts of the case

15. Mr. Raúl Naraza Salazar was 36 years old. He was a salesman, dealing mainly in office supplies. On November 22, 1991, Mr. Raúl Naraza Salazar set off for Lima, boarding a León de Huánuco, S.A., agency bus whose number plate was H-152. He took along with him a certain amount of the office supplies he customarily sold.

16. At approximately 9:00 a.m. that same day, November 22, 1991, when the above-mentioned bus had reached a place known as Puente Durand, about 30 kilometers from Tingo María on the road from that city to Huánuco in the Province of Leoncio Prado, Department of Huánuco, it was intercepted by a group of about 25 individuals, whom the petitioner identifies as Peruvian Army soldiers from the Tingo María Base, dressed in black polo shirts and armed with automatic rifles, grenades, and knives.

17. The above-mentioned persons made all the passengers get off the bus and then allowed all of them to get back on, except Mr. Naraza Salazar, who was forced to stay with them. They then proceeded to unload the merchandise Mr. Naraza Salazar had brought with him and the bus went on its way. Mr. Naraza Salazar was thus detained and never reappeared.

18. The petitioner points out that, given the clothing and weapons used by the above-mentioned persons, they obviously belonged to the Peruvian Army. The petitioner adds that, since the area where the events occurred was under strict military control, a state of emergency having been declared, it is unlikely that any other armed group not belonging to the State security forces--and as large and unhurried as this one--could have gone unnoticed by the military, especially considering that the events took place in broad daylight, on a main road barely 30 kilometers from Tingo María, the capital of the Province of Leoncio Prado.

19. Mr. Naraza Salazar's relatives applied numerous times to local and national authorities for the victim's release. In most of those efforts, they were assisted by CEAPAZ, a nongovernmental organization. The victim's brother, Mr. Ricardo Naraza Salazar, reported what had happened to the Office of the 22nd Provincial Prosecutor for Criminal Matters in Lima, on December 7, 1991. Likewise, the victim's mother, Mrs. Paula Consuelo Salazar de Naraza, a widow, went through endless proceedings in an effort to determine the whereabouts of her son. She reported his detention and disappearance to the Provincial Prosecutor for Leoncio Prado, the Special Attorney for Human Rights in Huánuco, the Attorney General, the Political-Military Chief Officer in Huánuco, and the officer in command of the Tingo María Military Base. The victim's mother later presented an additional complaint to the Office of the Ombudsman and Special Attorney for Human Rights.

20. In addition, Mrs. Paula Consuelo Salazar de Naraza filed a writ of habeas corpus with the examining magistrate for the Province of Leoncio Prado against the officer in command of the Tingo María Military Base, requested the Ministry of Defense to intervene in the case, and requested information from the officer in charge of the Tingo María Military Base and from the Political-Military Chief Officer in Huánuco. Nevertheless, the victim never reappeared.

Processing by the Commission

21. On March 17, 1992, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State replied on October 19, 1992. On July 16, 1993, the petitioner presented his observations regarding the State's reply. The State presented additional information on November 22, 1993.

Friendly settlement

22. On June 1, 1998, both parties were asked to provide the Commission with current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. The petitioner replied on June 16, 1998, saying that he was prepared to enter into a friendly settlement process as long as the State was willing to meet certain conditions. On July 31, 1998, the State reasserted its previous arguments, maintained that the case was inadmissible, and stated its view that it would be inappropriate to initiate friendly settlement proceedings.

Position of the State

23. In its reply dated October 15, 1992, Peru denied responsibility for the detention of Mr. Naraza Salazar and stated that, "according to intelligence information, he was abducted by persons presumed to be subversive criminals." That information was reasserted by the State on November 22, 1993. On July 31, 1998, the State alleged that the case was inadmissible.

D. Detention and disappearance of Mr. Rafael Magallanes Salazar Huamán - Case 10.995

Facts of the case

24. The petitioner states that on October 15, 1991, an Army patrol of approximately 15 men, commanded by Lieutenant Iván Lagos Céspedes, from the Military Base at Aucuyacu, in the Province of Leoncio Prado, Department of Huánuco, arrived at a village called Pueblo Nuevo on the side road between Aucuyacu and Tingo María. They took five people from their homes and proceeded to decapitate them with their bayonets. The heads were left in front of the victims' homes. The patrol then killed four more people. Having slit the throat of Mr. Alejandro Salas López, they left him for dead; he managed to survive and received medical care in Tingo María.

25. That same day, at around 8:00 p.m., the same patrol proceeded to detain Mr. Rafael Magallanes Huamán, a 32-year-old farmer, in the village of Pueblo Nuevo, District of San José Crespo y Castillo (Aucayacu), Province of Leoncio Prado, Huánuco. The patrol, traveling in three pickup trucks, stopped in front of Mr. Rafael Magallanes Huamán's home, next to the side road to Aucuyacu, arrested him in the presence of his brother-in-law, and took him to the Aucuyacu Military Base.

26. Beginning on October 16, 1991, Mr. Luis Magallanes Canelo, father of the victim, and other relatives inquired daily at the Aucuyacu Military Base as to the whereabouts of the victim. The soldiers denied having detained him. On October 22, 1992, at 12:35 p.m., Mr. Luis Magallanes Canelo, father of the victim, his daughter, and another woman in their company personally witnessed Mr. Rafael Magallanes Humán being placed on board a Peruvian Army helicopter with three other detainees. The helicopter allegedly went to the Los Laureles Military Base in Tingo María, arriving at around 1:00 p.m. That same day, the victim's father spoke to the officer in command of the Los Laureles Military Base, who denied that his son had been detained. On October 29 and 30, 1991, Mr. Luis Magallanes Canelo traveled to the city of Tarapoto, site of the Military Command Headquarters for Tingo María and Aucuyacu. Personnel at that location again denied that the victim had been detained.

27. Mr. Rafael Magallanes Huamán's relatives applied numerous times to local and national authorities for the victim's release. In most of those efforts, they were assisted by CEAPAZ, a nongovernmental organization. On October 23, 1991, the victim's father filed a complaint with the Office of the Provincial Prosecutor for Leoncio Prado and a writ of habeas corpus against the commanding officer in Tingo María. On November 15, 1991, the writ was rejected on the grounds that the soldiers had denied to the judge that they had made the arrest. That decision was upheld by a November 19, 1991, decision, but the latter was then overturned, on January 28, 1992, by the Supreme Court. The Court ordered the examining magistrate to correct the proceedings by citing the witness Alejandro Salas López.

28. On October 24, 1991, Mr. Luis Magallanes Canelo lodged a complaint with the Office of the Provincial Prosecutor for Leoncio Prado, but received no official reply. The complaint was resubmitted on November 7, 1991, to the Provincial Prosecutor for Leoncio Prado and to the Chief Prosecutor in Huánuco, but no reply was issued. The only outcome was that on November 12, 1991, the Provincial Prosecutor for Leoncio Prado issued official note Nº 823-91-MP-SFPM-LP, addressed to the officer in command of the Aucuyacu Military Base, requesting information on the detention of Mr. Rafael Magallanes Huamán.

29. In addition, Mr. Luis Magallanes Canelo appealed in vain to the Ministry of Defense, the officer in charge of the Tingo María Military Base, and the Political-Military Commander of the Department of San Martín. Despite all these efforts, the victim has never been located.

Processing by the Commission

30. On March 23, 1992, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State replied on October 19, 1992. On March 19, 1993, the petitioner presented his observations regarding the State's reply. Both parties presented additional information.

Friendly settlement

31. On June 1, 1998, both parties were asked to provide the Commission with current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. The petitioner replied, on June 16, 1998, that he was prepared to enter into a friendly settlement process provided that the State would meet certain conditions. The Commission extended the deadline for a State reply to July 31, 1998, but had received no reply by that date.

Position of the State

32. In its reply on October 15, 1992, Peru claimed to be investigating the facts of the case. On November 22, 1993, the State denied having detained Mr. Rafael Magallanes Huamán. It reasserted this claim on July 6, 1994, and March 2, 1995. On March 1, 1995, Peru claimed that, on January 10, 1995, a complaint had been filed with the Permanent Court-Martial of the Second Judicial District of the Army against Infantry Captain Gustavo La Torre Gálvez, alleged to have committed the crime of abuse of authority against Mr. Rafael Magallanes Huamán. The State added that this allegation did not imply acceptance of responsibility.

E. Detention and disappearance of Mr. Samuel Ramos Diego - Case 11.042

Facts of the case

33. On May 7, 1990, at 1:00 p.m., Mr. Samuel Ramos Diego, age 34, was returning on his motorcycle from Tingo María, capital of the Province of Leoncio Prado, Huánuco, to Castillo Grande. Mr. Ramos Diego was with his six-year-old son, Samuel, and Mr. Jesús Licceti Mego. On the way, at a spot called Pucuruyacu, they were intercepted by a white Datsun pickup truck with polarized windows. Seven soldiers, dressed in civilian clothing, got off the truck.

34. These seven men detained and beat Mr. Ramos Diego and Mr. Licceti Mego, and then took them to the Army Barracks in Tingo María. All this took place in the presence of eyewitnesses. At 3:00 p.m. that same day, Mr. Ramos Diego's wife, Belinda Ruíz Villanueva, went to the aforementioned barracks in Tingo María, where the soldiers denied having arrested her husband.

35. Mr. Ramos Diego's relatives applied on numerous occasions to local and national authorities for the victim's release. In most of those efforts, they were assisted by CEAPAZ, a nongovernmental organization. Mr. Ramos Diego's wife, Belinda Ruíz Villanueva, also went to see the Office of the Provincial Prosecutor. That office received official note Nº 094B/BG513, dated May 10, 1990, from the military authorities stating that Mr. Ramos Diego had been released on May 7, 1990, attached to which was a certificate of release supposedly signed by Mr. Ramos Diego. However, the signature on that certificate differs from that of Mr. Ramos Diego.

36. The family continued its efforts to determine the whereabouts of the victim, repeatedly contacting the Tingo María barracks as well as other police and military stations in the area, including those in Tocache, Juanjuí, Saposoa, and Tarapoto, and the corresponding government attorneys' offices. On May 28, 1990, a friend of the family allegedly saw Mr. Ramos Diego in the Military Base at Aucuyacu, with his hands tied and looking emaciated. For that reason, the family persisted in its efforts to secure his release.

37. On June 6, 1990, Mr. Abraham Ramos Diego, brother of the victim, filed a writ of habeas corpus before the Court of the First Instance in Tingo María against the commanding officer at the military base in Tingo María, Army Lieutenant Colonel Manuel Rojas García. On June 21, 1990, Mr. Abraham Ramos Diego filed another writ of habeas corpus before the Court of the First Instance at Mariscal Cáceres, in the Province of Tocache, Department of San Martín, against the commanding officer of the military base in Uchiza.

38. On July 2, 1990, Samuel Ramos Diego's father formally reported an abduction to the Chief Prosecutor in Huánuco. In addition, relatives of the victim also made inquiries with the Office of the Attorney General, the Peruvian Senate, the Ministry of Defense, the Army High Command, and the Army's General Inspectorate. Nevertheless, Mr. Samuel Ramos Diego has not reappeared.

Processing by the Commission

39. On July 28, 1992, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State never replied.

Friendly settlement

40. On June 1, 1998, both parties were asked to provide the Commission with current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. The petitioner replied, on June 16, 1998, that he was prepared to enter into a friendly settlement process provided that the State would meet certain conditions. The State replied on July 31, 1998, alleging that the case was inadmissible and stating that, in its view, it would be inappropriate to initiate friendly settlement proceedings.

Position of the State

41. The Peruvian Government did not respond to the accusations filed against it. On July 31, 1998, Peru alleged that the case was inadmissible, because domestic legal remedies had not been exhausted, and it went on to say that "the military personnel involved was charged by the civil courts with a violation of individual freedoms and with a violation of the freedom of and a personal tort against Samuel Ramos Diego. It is important to clarify that this circumstance should not be construed as a tacit acceptance of responsibility on the part of the Peruvian government, but rather as a real intention to seek clarification of the incident."

F. Detention and disappearance of Mr. Wilmer Guillermo Jara Vigilio – Case 11.136

Facts of the case

42. Mr. Wilmer Guillermo Jara Vigilio, age 19, resident of Huánuco, decided to go to the city of Aucuyacu in search of employment. On August 31, 1991, at the port of Aucuyacu, Mr. Jara Vigilio was arrested by soldiers stationed at the Military Base in that city. The arrest was witnessed by friends of the victim's family.

43. Mr. Jara Vigilio's relatives applied on numerous occasions to local and national authorities for the victim's release. In most of those efforts, they were assisted by CEAPAZ, a nongovernmental organization. Mr. Francisco Jara Dionicio, the victim's father, went to great lengths to find his son, at the military installations in both Tingo María and Aucuyacu, but to no avail.

44. On October 29, 1991, a writ of habeas corpus was filed before the Court of the First Instance for Leoncio Prado against the commanding officer at the Military Base in Aucuyacu, but to no avail. On that same day the case was reported to the Second Joint Office of Provincial Prosecutors for Leoncio Prado. The latter, on October 29, 1991, issued official note Nº 788-91-AM-SFPM.LMP, addressed to the commanding officer of the military base in Aucuyacu, inquiring as to the whereabouts of Mr. Jara Vigilio. A complaint was also filed on October 29, 1991, with the Office of the Attorney General.

45. Complaints were also lodged with the Chief Prosecutor in Huánuco and the Office of the Ombudsman and Special Attorney for Human Rights. The case was brought to the attention of the political-military commanders for Huánuco and San Martin, the commanding officer at the Aucuyacu Military Base, the Chairman of the Justice and Human Rights Committee of the Chamber of Deputies, and the Chairman of the Justice and Human Rights Committee of the Senate. Despite all those efforts, Mr. Jara Vigilio never reappeared.

Processing by the Commission

46. On March 31, 1993, the Commission opened the case, remitted the pertinent parts of the complaint to the Peruvian State, and requested information within 90 days. The State replied on September 20, 1993. On August 10, 1994, the petitioner presented his observations regarding the State's reply. Peru presented additional comments on June 14, 1994, and May 29, 1996.

Friendly settlement

47. On June 1, 1998, both parties were asked to provide the Commission with current information on the case and were told that the Commission was available to assist them in seeking a friendly settlement. The petitioner replied, on June 16, 1998, that he was prepared to enter into a friendly settlement process provided that the State would meet certain conditions. The State replied on July 24, 1998, that, in its view, it would be inappropriate to initiate friendly settlement proceedings.

Position of the State

48. On September 20, 1993, the State denied having detained Mr. Jara Vigilio, a claim it reasserted on June 14, 1994, and on May 29, 1996.

III. FRIENDLY SETTLEMENT

49. 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

50. 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

51. 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

52. 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.

53. 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.

54. 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.

55. 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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56. 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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57. 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.

[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

58. 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

59. 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 fot the petitions

60. 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.

61. 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

62. 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.

63. 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-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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64. 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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65. The modus operandi used, according to the petitions received by the Commission, in the arrests and disappearances in the cases in question, involving Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, shows an overall pattern of behavior that can be considered admissible evidence of a systematic practice of disappearances.

66. 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.
[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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67. 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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68. 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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69. 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 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.

Perpetration OF THE DISAPPEARANCES

70. 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

71. 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.

72. 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.

73. 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.

74. 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.

75. 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

76. 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 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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77. 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

78. 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

79. 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.

80. 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 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

81. 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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82. 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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83. 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]

[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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84. 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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85. 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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86. 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

87. 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.

[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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88. 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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89. 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]

[FN28] UN Human Rights. Enforced or Involuntary Disappearances. Fact Sheet Nº 6 (Rev. 2), Geneva, 1997, pages 1 and 2.

E. ESTABLISHED FACTS

90. 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.

91. Thus, from the facts of the cases 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.

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

a. The events surrounding the detention and subsequent disappearance of Mr. Juan de La Cruz Núñez Santana, (case 10.815) at the hands of Peruvian Army personnel, on April 11, 1990, 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. Willian Guerra González, (case 10.905) at the hands of Peruvian Army personnel, on May 17, 1990, as described in detail in paragraphs 8-10 of this Report, did indeed take place.

c. The events surrounding the detention and subsequent disappearance of Mr. Raúl Naraza Salazar (case 10.981) at the hands of Peruvian Army personnel, on November 22, 1991, as described in detail in paragraphs 13-18 of this Report, did indeed take place.

d. The events surrounding the detention and subsequent disappearance of Mr. Rafael Magallanes Huamán (case 10.905) at the hands of Peruvian Army personnel, on October 15, 1991, as described in detail in paragraphs 21-26 of this Report, did indeed take place.

e. The events surrounding the detention and subsequent disappearance of Mr. Samuel Ramos Diego (case 11.042) at the hands of Peruvian Army personnel, on May 7, 1990, as described in detail in paragraphs 29-34 of this Report, did indeed take place.

f. The events surrounding the detention and subsequent disappearance of Mr. Wilmer Guillermo Jara Vigilio (case 11.136) at the hands of Peruvian Army personnel, on August 31, 1991, as described in detail in paragraphs 37-40 of this Report, did indeed take place.

94. 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

95. The Commission will now analyze the specific violations by the Peruvian State of rights protected by the Convention, involved in the disappearances of Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio.

Right to Personal Liberty (Article 7 of the Convention)

96. 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.

97. In this case, Peruvian citizens 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.

98. 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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99. 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.

100. 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.

101. 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.

[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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102. 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.

103. The Commission concludes that the Peruvian State is responsible for violating the right to personal liberty and security by arbitrarily imprisoning Peruvian citizens Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio; 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)

104. Since forced disappearance involves violation of multiple rights, violation of the right to humane treatment is implicit in the cases of Messrs. Juan de La Cruz Núñez Santana, Willian

Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio.

105. 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]

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

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106. 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)

107. 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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108. In the cases of Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, 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.

109. There is sufficient evidence to support the presumption that Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio 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.

110. 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)

111. 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. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio 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(1) 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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112. 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)

113. 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.

114. 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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115. The writs of habeas corpus were completely ineffective in accomplishing their purpose. Criminal procedures under Peruvian domestic jurisdiction 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. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio.

116. 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.

117. 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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118. 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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119. 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 Nº 8, paragraph 35.

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120. 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 Nº 9, paragraph 21.

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121. 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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122. 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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123. 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

124. 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.

125. 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., paragraphs170 and 172.

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126. The Commission concludes that the forced disappearance of Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio 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.

127. 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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128. 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. ACTIVITIES FOLLOWING REPORT Nº 62/98

129. The Commission approved Report Nº 62/98 (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.

130. The State conveyed to the Commission its responses to Report No 62/98 by means of note Nº 7-5-M/570, 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.

131. 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.

132. With regard to the case of Juan de la Cruz Núnez Santana, the Government indicated that its position was not reflected in full in the report in question, since according to the Government of Peru, Mr. Núnez Santana was detained and released on the same day, which, it claims, did not amount to a "restriction of freedom of the nature of a detention." With respect to the case of William Guerra González, the Government maintains that the victim was abducted by presumed terrorists. As for the case of Raúl Naraza Salazar, the government stated that the report that said person was detained by presumed subversive criminals was based on the statement of an eye-

witness. The pertinent reference given in the document drawn up by the IACHR is that "according to the statement made by a witness to the detention of Raúl Naraza Salazar, it appeared that the presumed perpetrators were members of a subversive group."

133. 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.

134. On the question of the Commission's recommendation that the State conduct a serious and impartial investigation of the events relating to the disappearances of the victims, the State replied that the investigation that it carried out at the time in question was serious and impartial, and, therefore, that recommendation would appear already to have been fulfilled.

135. As for the Commission's recommendation that the State annul any measure, be it domestic, legislative or of any other nature, that tends to impede the investigation, processing, and punishment of the persons responsible for the arrest and/or disappearance of the victims, especially amnesty laws Nos. 26479 and 26492, the State claims that those laws are consonant with the Peruvian Constitution.

136. 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".

137. On the question of the Commission's recommendation that the State adhere to the Inter-American Convention on the Forced Disappearance of Persons, Peru answered that such an act constitutes an act of sovereignty that pertains to the Peruvian Congress and added that the Peruvian State has included in its domestic legislation aspects relating to forced disappearance of persons as an offense against human rights.

138. The Commission abstains from analyzing the repetition by the Peruvian State of arguments made prior to adoption of the aforementioned Report Nº 62/98 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.

139. As to compliance with the recommendations that the Commission made to the Peruvian State in the aforementioned Report Nº 62/98, 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 disappearances of 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 62/98 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.

140. 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 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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141. 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.

142. 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 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

143. On the basis of the evidence on file, the Commission concludes that Peruvian Army personnel deployed in the Department of Huánuco proceeded to illegally detain, and bring about the disappearance of, Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, 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. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, 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. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio. To that end, the State should repeal Acts Nos. 26479 and 26492.

3. Grant appropriate reparations to the relatives of Messrs. Juan de La Cruz Núñez Santana, Willian Guerra González, Raúl Naraza Salazar, Rafael Magallanes Huamán, Samuel Ramos Diego, and Wilmer Guillermo Jara Vigilio, 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

144. On March 3, 1999, the Commission transmitted Report 11/99--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.

145. 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.