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Title/Style of Cause: Extrajudicial Executions and forced disappearances v. Peru
Doc. Type: Report
Decided by: President: Helio Bicudo;
First Vice-President: Claudio Grossman;
Second Vice-President: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 11 October 2001
Citation: Extrajudicial Executions v. Peru, Case 10.247, Inter-Am. C.H.R., Report No. 101/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANT: Asociacion Pro Derechos Humanos
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I. SUMMARY

1. From 1984 to 1993, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received, among others, 25 petitions alleging that the Peruvian State (hereinafter “the State,” “Peru,” or “the Peruvian State”) violated rights set forth in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of the following 119 persons: Luis Miguel Pasache Vidal (Case 10.247); Walter Wilfredo Valer Munaylla (Case 10.472); Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805); Javier Alberto Ipanaque Marcelo, Guillermo Salinas Conde, Fidel Romero Conde, Uriol Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay (Case 10.878); Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani (Case 10.913); Guillermo Marín Arenas, Gerardo Chaico, Cirila de Chaico and her five-year-old son, the sister of Cirila de Chaico and her two-year-old son, and six unidentified persons (Case 10.947); Teodoro Lorenzo Alvarado Castillo (Case 10.994); Raúl Antero Cajacuri Roca (Case 11.035); Adrián Medina Puma (Case 11.051); Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057); Ricardo Salazar Ruiz (Case 11.065); Amadeo Inca Ñaupá (or Amadeo Arcanaupa), Luciano Huamán García, Antonio Janampa Aucassi, Constantina García Gutiérrez, Marciano (or Mariano) Janampa García,

Agripina Aucassi Espilico, Maura Huamán Paucar, Demetrio Huamán León, Víctor Rojas Huamán (or Víctor Huamán Paucar), Mauro Huamán Paucar, Narciso Huamán Paucar, and Melecio Chonta Huamán (Case 11.088); Pascual Chipana Huauya, Pelagia Chipana Condori, Paulina Vásquez Esquivel, Donato Pablo, Juan Cacñahuaray, Jovita Cahuana, Pelayo Capizo, and Pelagia Pillaca (Case 11.161); Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292); Moisés Carvajal Quispe (Case 11.680); Luis Alberto Sangama Panaifo and Lucio Escobal Fretel (Case 10.564), Arturo Torres Quispe (Case 10.744); Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuall Salomé, and César Sánchez Castro (Case 11.040); Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Vilchéz Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126); Edith Galván Montero (Case 11.132); Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179); Víctor Tineo Sandoval, Guillermina Quispe de Tineo, Eulogio Demetrio Bohorquez Tineo, Ivan Roberto Tineo Rodríguez, and Elías Bohorquez Tineo (Case 10.431); Concepción Ccacya Barrientos, Maximiliana Sotaya, Donato Morán, Emiliana Puga, and Fortunato Venegas (Case 10.523); Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064); and Camilo Nuñez Quispe and Teófilo Nuñez Quispe (Case 11.200). In those petitions it was indicated that some of the above-mentioned persons were extrajudicially executed by State agents, and that the rest were victims of forced disappearances also perpetrated by state agents.

2. Once the petitions were received, the Commission opened each of the cases and processed them individually, in keeping with the provisions of the American Convention and the Regulations of the Inter-American Commission on Human Rights (hereinafter “the Commission’s Regulations”). The State alleged inadmissibility for failure to exhaust domestic remedies in some cases, and in others it merely reported on the course of the investigation. Bearing in mind the uniformity in the current stage of processing in all the cases, which makes it possible to resolve them together, the common characteristics of the facts alleged, the common time frame, and the fact that they all refer to allegations of extrajudicial executions or forced disappearances attributed to State agents, the Commission decided to combine the foregoing cases and proceed to resolve them together, pursuant to Article 40 of its Regulations.

3. In this report, the Commission decides to admit the cases, and to rule on the merits. In this respect, the Inter-American Commission determines that the Peruvian State is responsible for the extrajudicial execution of some victims, and for the forced disappearance of all the others, and finds that Peru violated, to the detriment of the victims, with the particulars indicated in each case, the human rights to personal liberty, humane treatment, a fair trial, judicial protection, special measures of protection, and juridical personality, enshrined in Articles 7, 5, 8, 25, 19, and 3, respectively, of the American Convention. The Commission also makes the pertinent recommendations to the Peruvian State, which have to do with nullifying the domestic provisions

and judicial decisions that tend to impede the investigation, trial, and punishment of the persons responsible for the human rights violations in question; to perform a serious, exhaustive, impartial, and effective investigation to determine the individual responsibilities for those violations, to punish the persons responsible, and to pay compensation to the victims' families for the human rights violations found. The IACHR also recommends that the Peruvian State accede to the Inter-American Convention on Forced Disappearance of Persons. <![endif]>

II. FACTS ALLEGED, PROCESSING, AND POSITION OF THE STATE

A. Cases of Extrajudicial Executions

1. Luis Miguel Pasache Vidal (Case 10.247)

Facts alleged

4. Pursuant to the complaint submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on Saturday, August 13, 1988, five men in civilian dress who identified themselves as members of the Investigative Police, Anti-Terrorism Sub-directorate (PIP) detained Luis Miguel Pasache Vidal, 34 years of age, former student at the Universidad Nacional Mayor de San Marcos, at his domicile, located at Calle Justo Pastor Bravo, interior 57, in San Martín de Porres, Lima, on suspicion of terrorism. Mr. Pasache Vidal had worked as a taxi driver during the two years prior to his detention, after having served a five-year prison sentence imposed for belonging to the Movimiento Revolucionario Túpac Amaru (MRTA). The day after his detention, his corpse was found by fishermen at the Puerto Viejo beach, with a gunshot wound in the head. Even so, the autopsy recorded the cause of death as "asphyxia by submersion"; the family members were not informed that the corpse had been discovered until September 22, 1988. The next day, on September 23, 1988, the newspapers published the news, asserting that the "Rodrigo Franco Paramilitary Command" had assumed responsibility, in retaliation for the kidnapping of Gen. Héctor Jerí García.

5. The initiatives taken by the victim's family before the Peruvian authorities proved fruitless. The first, August 22, 1988, was a habeas corpus action submitted before the 37th Court of Investigation of Lima, which was declared inadmissible since there was no record in any police office of the detention of Luis Miguel Pasache Vidal. The second was a complaint for kidnapping lodged with the Office of the Provincial Prosecutor for Criminal Matters of Lima on August 31, 1988, against the Director General of the Police Forces, the Senior Director of the Investigative Police of Peru, the Deputy Director of the Office of the Deputy Director against Terrorism, and others, without any investigation whatsoever into the matter.

Processing before the Commission

6. The Commission opened the case on October 14, 1988, and forwarded the pertinent parts of the complaint to the Peruvian State, and asked it to provide information on the facts alleged. The request for information was reiterated on February 23, 1989, September 7, 1989, and August 3, 1992. The Peruvian State responded on September 2, 1993, and on September 16, 1993, it corroborated the information it had submitted.

7. On April 13, 2000, the Commission asked the parties to submit up-to-date information on any progress in the proceedings initiated in this case in the domestic jurisdiction, and on the exhaustion of domestic remedies, or their current status, giving each of the parties 45 days to respond. In addition, in the same note, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was no agreement between the parties to pursue a friendly settlement. The State answered on August 2, 2000.

The State's position

8. The State, in its responses of September 3 and 21, 1993, did not controvert the facts, and alleged that "the person of Pasache Vidal Luis Miguel is not on record in the log books of detainees kept at the OCD-DINCOTE for 1988." As regards the finding of the corpse, it noted that it was found August 13, 1988, by fishermen at the beach of Puerto Viejo, and that according to the autopsy, the cause of death was "asphyxiation by submersion," though he had a gunshot wound in the skull. It added that "there is no document of the 38th Provincial Prosecutor for Criminal Matters of Lima on record related to the alleged kidnapping of Luis M. Vidal," and that the investigations were archived on September 19, 1988, because it was not possible to identify the persons responsible. The State indicated that it was for this reason that it did not consider it advisable to pursue a friendly settlement.

2. Walter Wilfredo Valer Munaylla (Case 10.472)

Facts alleged

9. According to the petition submitted to the IACHR by the Andean Commission of Jurists, on September 20, 1989, Walter Wilfredo Valer Munaylla, 20 years of age, secondary school student, was detained by members of the Peruvian Army when he went to the "Los Cabitos" barracks to obtain a document related to his military service. His corpse was found, with signs of torture, on October 7, 1989, at the door of his workplace in the La Magdalena neighborhood. Four days later, on October 11, 1989, his sister, Marlene Rita Valer, 14 years of age, secondary school student, was detained by uniformed members of the Peruvian Army, at Calle Ramón Castilla, cuadra N° 4, in the city of Huamanga, department of Ayacucho. The detention was witnessed by an eight-year-old student. In the observations, the complainant argued that there was no effective investigation, and the armed forces deny having carried out the detention. The facts described were reported to the local authorities.

Processing before the Commission

10. On October 13, 1989, the Commission opened the case and transmitted the pertinent parts of the complaint to the State, at the same time requesting information on the facts alleged. The Commission reiterated the request for information on March 7, 1990, and April 12, 1990. The State answered on April 24, 1990. Both parties provided additional information on several occasions.

11. On May 2, 2000, the Commission asked both parties to provide up-to-date information within 45 days. In this last communication, the Commission placed itself at the parties' disposal to pursue a friendly settlement. When this period expired, there was no agreement to pursue a friendly settlement. On July 6, 2000, the State forwarded its observations, which were transmitted to the petitioner on July 14, 2000. The State sent additional information on August 9, 2000, which was forwarded to the petitioner on September 20, 2000.

The State's position

12. The State initially denied the participation of military personnel from the Peruvian armed forces in the detention and later disappearance of the child Marlene Rita Valer Munaylla, and in the detention and later summary execution of Walter Wilfredo Valer Munaylla. It also reported that the case on the homicide of Walter Wilfredo Valer Munaylla was brought before the 1st Mixed Provincial Prosecutor of Huamanga, Ayacucho. Later, the Peruvian State requested that the case be archived, arguing that since 1990 the petitioner had lost interest in the case and also because in the police report, sent to the Second Mixed Provincial Prosecutor of Huamanga, it was learned that members of the group Shining Path stated they had executed Miguel Valer, the victim's brother, and the victim himself was held on March 20, 1989, for allegedly committing a crime against property, it being deduced, based on this information, that Walter Wilfredo Valer was assassinated by a terrorist group, which must have taken him for his brother, Miguel Valer. The State also adduced that Marlene Rita Valer Munaylla had been released the afternoon of the day she was detained, and that she currently was residing with Mr. Oscar Cueto Gastelu in the city of Huamanga, as corroborated by the parents of the alleged victim. The State added that the "record of finding of survival dated June 2, 2000," signed by Marleny R. Valer, a copy of the "national identity document," and her "higher education" card. The State attached to the last report a copy of the statement by Félix Valer Zárate, the victim's father, in which he describes his daughter's release after being stopped.

3. Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805)

Facts alleged

13. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on May 14, 1990, 15 members of the Peruvian Police, Special Operations Division (DOES) forcibly entered the installations of the secondary school Colegio Nacional "Victoria Andrés Belaúnde," in the city of Llaclla, district of Abelardo Pardo Lezama, province of Bolognesi, department of Ancash, and detained three citizens: Nilton Adelmo Loli Mauricio, 28 years of age, teacher, and the director of the school; Saturnino Serrate García, professor at the same school; and Esaú Daniel Moreno Cotrina, a student's father. According to the complaint, the police authorities of the city of Huaraz did not admit to the detention and communicated that the detentions were by members of the DOES, of the General Police of Lima. The petitioner added that the events occurred after an incursion by Shining Path in Chiaquian, capital of the province of Bolognesi, on April 16, 1990. The three victims' corpses, with gunshot wounds in the temple, were found and recognized by the families. Petitioner further alleges that 25 corpses bound, some mutilated, in an advanced state of putrefaction, which appear to

correspond to the persons disappeared in the zone, were also found in a common grave, at the Canchis mine in the district of Jacamarquilla, province of Bolognesi. Complainant states that members of the National Police quartered in Conocoha, Coorpanqui and Raján patrolled the place to impede any investigation of the common grave. These facts were made known to the Superior Prosecutor (Fiscal Superior Decano) of Ancaci on June 5, 1990.

Processing before the Commission

14. On March 14, 1991, the Commission opened the case and transmitted the pertinent parts of the complaint to the Peruvian State, requesting that it provide information on the facts alleged. The State responded on September 30, 1991, and on October 23, 1992, it amended its response. Both parties submitted additional information on several occasions.

15. On June 13, 2000, the Commission requested of both parties that they provide up-to-date information within 45 days. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State answered on July 26, 2000.

The State's position

16. In its initial response the State affirmed that the Peruvian armed forces are not implicated by act or omission in the detention and disappearance of the alleged victims, and added that their names do not appear on record as having been detained, nor are there any records of their deaths. In the observations forwarded on September 6, 1994, the State adduced that the supposed finding of 21 corpses was refuted, as deduced from a direct on-site inspection. The State also reported that there is an arrest warrant outstanding for Esaú Moreno Cotrina in a criminal proceeding by the Peruvian judicial authorities for the crime of terrorism. Based on the foregoing, and on the failure to exhaust domestic remedies, the State indicated that the Office of the Special Provincial Human Rights Prosecutor of Ancash pursued the investigation, and that as the complaint and allegations involved members of the police, the Office of the Prosecutor, based on Law N° 26,479, also known as the "Amnesty Law," issued a resolution dated January 2, 1996, and archived the investigation, with prejudice. The Peruvian State did not consider it advisable to pursue a friendly settlement.

4. Javier Alberto Ipanaque Marcelo, Guillermo Salinas Conde, Fidel Romero Conde, Uriol Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay (Case 10.878)

Facts alleged

17. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), on May 3, 1991, members of the Peruvian Army were seen halting traffic on the highway prior to reaching Huamaya and Andahuasi, where there is a military base. Between 12:40 a.m. and 3:00 a.m., in the locality of Huamaya and Chambara, located on the road to the military base at Andahuasi, province of Huaura, department of Lima, several armed men wearing Army clothes, some with bulletproof vests, and with their faces covered by black

ski masks, sought out several persons by their respective names, forcibly entered their homes, and assassinated them. In Huamaya, Milagros Ipanaque Marcelo was taken by the armed group to identify the house of her brother, Javier Ipanaque Marcelo, who they assassinated with two gunshot wounds. They did the same to Guillermo Salinas Conde and Fidel Romero Conde. At 3:00 a.m. in Chambara they executed Uriel Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay Anaya. They made inscriptions alluding to subversive groups on the walls of the towns which were not those used by the subversive groups. After the summary executions the agents continued on the route to the barracks. The facts described were reported to the local authorities, and were preceded by an attack perpetrated by the Movimiento Revolucionario Túpac Amaru on April 23, 1991, at kilometer 153 of the Pan American Highway north of Lima, in which four soldiers were killed. The petitioner attributes the incident to members of the Army, and includes a copy of sections of the investigation carried out by the Senate Committee, which is the source of the evidence it presents to support its assertion.

18. Finally, the petitioner reports that in none of the cases of human rights violations from 1980 to June 1995 has it been possible to investigate or punish the persons responsible, because of the Amnesty Laws, Nos. 26,479 and 26,492.

Processing before the Commission

19. On May 17, 1991, the Commission opened the case and forwarded the pertinent parts to the State, which it asked to provide information on the facts alleged. The State answered on July 18, 1991. The petitioner submitted observations to the State's response on September 13, 1991. The State submitted its reply to the petitioner's observations on February 7, 1992. Both parties presented additional information on several occasions.

20. On May 2, 2000, the Commission requested of both parties that they provide up-to-date information within 45 days. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

21. In its initial response, the State denied the participation of the members of the armed forces in the facts, attributing responsibility instead to the terrorist groups that operate in that area. In the subsequent reports, the State reported that in the police investigations it had been proven that the perpetrators were members of the terrorist group Shining Path. Finally, the State communicated that the Office of the Provincial Prosecutor ordered the provisional archiving of the investigation for not having succeeded in identifying and arresting the perpetrators.<![endif]>

5. Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani (Case 10.913)

22. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), on May 19, 1991, at the place called Puncopata, in the district of

Orurillo, province of Melgar, department of Puno, members of the group Shining Path stole the bicycles of Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani, all members of the peasant community of Sillota, who followed these persons for the sole purpose of recovering their means of transportation. When they reached the bridge at Ajllamayo, the four peasants were forced to follow the insurgents to the community of Chilliutira. After the confrontation, the four peasants from the community of Sillota were detained by members of the community of Chilliutira. The captured community members were placed under the custody of a patrol that included thirty Army soldiers, under the command of Second Lieutenant José Loayza Gutiérrez. That patrol transferred the four peasants to the SAIS at Posoconi, where the members of the security forces communicated with their respective bases. From there the four peasants were taken, still alive, to the city of Ayaviri. This was the last time the witnesses saw the four peasants alive. The next day, May 21, Army Major Teodoro Guevara Ugaz went to the Investigative Court of Ayaviri requesting the official act of removing the bodies be performed in respect of six corpses at the “Los Tigres” military base, in that city. The corpses included the four peasants who are the subject of this complaint. The official report indicated that the corpses were of subversives who died in an armed confrontation with members of the Army at Chiquiri. The facts described were reported to the local authorities, and the autopsy of the victims found contusions in several parts of the body caused before they died, and gunshot wounds from a short distance and vertical trajectory, three in the skull, evidencing signs of torture and summary execution.

23. The petitioner alleged lack of jurisdiction of the military criminal courts, which by ruling of the Supreme Court took cognizance of the case and ordered that charges be dismissed in the prosecution for the crime of negligent homicide (homicidio culposo).

Processing before the Commission

24. On July 2, 1991, the Commission opened the case and transmitted the pertinent parts of the complaint to the State, which it asked to provide information on the facts alleged. The State responded on September 23, 1992, and sent additional information on May 20, 1993. The petitioner presented its observations to the State’s response on February 28, 1994. Both parties submitted additional information on several occasions.

25. On April 25, 2000, the Commission asked both parties to provide up-to-date information, and asked them to respond within 45 days. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was no agreement between the parties to pursue a friendly settlement. The petitioner answered on June 8, 2000, and the State did so on June 12, 2000.

The State’s position

26. The State indicated that a case was opened in the domestic jurisdiction, case number 3163-91, before the Investigative Court of the Province of Melgar. For this reason, it asked that the case be declared inadmissible since domestic remedies had not been exhausted. In its initial response, it indicated that accusations were lodged in the civilian jurisdiction against Second

Lieutenant José Loayza Gutiérrez and Major Teodoro Guevara Ugas, for the crime of aggravated homicide, and that when the jurisdictional conflict arose between the civilian and military jurisdictions, the Supreme Court ordered the investigation to be removed to the military jurisdiction. In its later observations, the State simply reported that the four alleged victims were shot by personnel from the patrol when they tried to escape, after having been ordered to stop. Later, the State communicated that the Supreme Council of Military Justice affirmed the decision of dismissal given by the court-martial (Consejo de Guerra) of the Third Judicial Zone of Arequipa for Second Lieutenant José Loayza Gutiérrez and Major Teodoro Guevara Ugas. Based on the existence of this domestic proceeding, the State asked that the case be declared inadmissible on grounds of failure to exhaust domestic remedies. Accordingly, the State did not consider it appropriate to pursue a friendly settlement.

6. Guillermo Marín Arenas, Gerardo Chaico, his wife Cirila de Chaico and her five-year-old son, Cirila de Chaico's sister and her two-year-old son, and six unidentified persons (Case 10.947)

Facts alleged

27. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), on September 2, 1991, members of the Peruvian Army arrived at the hamlet of U.T.C., an area under the control of the armed forces, and assassinated 12 people. After appropriating the property of Gerardo Chaico, they burned the dwelling. There they slit the throat of Gerardo Chaico and cut him open from the chest to the abdominal area; they shot his wife Cirila and assassinated their five-year-old son, Cirila de Chaico's sister, and her two-year-old son. They assassinated Guillermo Marín Arenas using a cutting instrument. They also assassinated six more unidentified peasants. The facts were alleged by members of the community in the domestic jurisdiction, without any results.

Processing before the Commission

28. On September 18, 1991, the Commission opened the case and transmitted the pertinent parts of the complaint to the State, requesting that it provide information on the facts alleged. The State responded on November 8, 1991. The petitioner submitted its observations to the State's response on February 3, 1992. The petitioner provided additional information on May 5, 1992.

29. On April 25, 2000, the Commission asked both parties to provide additional information within 45 days. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the American Convention. Once the term expired, there was no agreement between the parties to pursue a friendly settlement. The petitioner provided the information requested on June 8, 2000.

The State's position

30. In its initial response, the State reported that Gerardo Chaico and Cirila de Chaico had not been detained by the Peruvian Army.

7. Teodoro Lorenzo Alvarado Castillo (Case 10.994)

Facts alleged

31. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on March 11, 1991, eight soldiers from the Peruvian Army forcibly entered the home of Teodoro Alvarado Chancahualla, located in the hamlet of Huaycalla, and arbitrarily detained his son, Teodoro Lorenzo Alvarado Castillo, 29 years of age. Mr. Alvarado Castillo continued to be held that night in the school at Sayla, which they used as a military barracks, and the next day, March 12, 1991, the members of the Army ordered his transfer to the city of Cotahuasi, capital of the province of La Unión. Mr. Alvarado Castillo was executed; the soldiers explained that he had tried to escape and that therefore they shot him. The petitioner asserts that it was an extrajudicial execution, because the victim was defenseless and suffered muscular problems, which hindered him from trying to flee; moreover, Teodoro Alvarado was tortured the night before his assassination, and he had gunshot wounds in the back.

Processing before the Commission

32. On March 23, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on September 23, 1992, and it provided additional information on October 27, 1992, and June 14, 1994.

33. On April 25, 2000, the Commission requested that the State and petitioners provide up-to-date information about the case, asking the parties to answer within 45 days. In the same note, the Commission made itself available to the parties to facilitate a friendly settlement pursuant to Article 48(1)(f) of the American Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

34. The State argued that in relation to this case, criminal proceedings were under way under number 1866-92, before the Standing Court-Martial (Consejo de Guerra Permanente) for the Third Judicial Zone of the Army for the crime of negligent homicide (homicidio culposo).

8. Raúl Antero Cajacuri Roca (Case 11.035)

Facts alleged

35. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on February 16, 1991, members of the military, using ski masks and heavily armed, entered the residence, located at Calle Chanchamayo 397, district and province of Tarma, department of Junín, which was the home of Raúl Antero Cajacuri Roca, 48 years old, retired teacher, former secretary of the Movimiento Libertad. Professor Cajacuri Roca was detained without being told the motive, and apparently was taken to the military base at Tarma in

a light-colored pick-up parked at the intersection of Amazonas and Chanchamayo streets. The child Dante Fabricio Cajacuri Ortiz, the victim's son, and Peruvian police agent Bayona Quezada Martínez, were witnesses to these events. The next day, Lucía Roca Vásquez and Julia Ortiz de Cajacuri, the victim's mother and wife, respectively, looked for the detainee at that military unit, where they denied he was detained there, but they found out that he had been transferred to the military base at Jauja. There, the military authorities admitted he was detained, and stated they were going to transfer Mr. Cajacuri Roca to the military base at Chilca, in Huancayo, but that unit reported that Mr. Cajacuri Roca did not appear on the list of persons detained.

36. The petitioner indicated that the facts were reported to the provincial prosecutor for Huancayo. The respective judge inspected the military base at Jauja, but did not find the detainee. They found his corpse on April 9, 1991, on the banks of the Mantaro river, district of Ataura, province of Jauja, department of Junín, with the feet and hands bound. In the autopsy, the cause of death recorded was "asphyxia due to submersion" and the wounds were described as caused by a sharp instrument in the chest, which leads petitioner to conclude he was tortured. The police investigation, according to police report N° 89-PC-JP-PT, concluded by stating "that personnel from the Peruvian Army in civilian dress, not identified, are the presumed perpetrators of the kidnapping of Mr. Raúl Antero Cajacuri Roca ... and in addition that ... they are the presumed perpetrators of the murder." As a result, that Office of the Provincial Prosecutor ordered that the investigation be referred to the Chief of the "Andrés Avelino Cáceres" Political-Military Command of the Region, to carry out the investigation. Nonetheless, on March 17, 1993, the Office of the Mixed Prosecutor of Tarma ordered that the investigation be provisionally archived on grounds that the perpetrators had not been identified.

37. The complainant considers that an adequate investigation has not been carried out, one which would have sufficient grounds for reaching another result, and that therefore the inquiry should be reopened.

Processing before the Commission

38. On July 13, 1992, the Commission re-opened the case and transmitted the pertinent parts of the complaint to the Peruvian State, and requested information on the facts alleged. On September 16, 1992, the State answered, and submitted additional information on February 8, 1993. The petitioner submitted its observations to the State's answer on March 30, 1993. The State submitted additional information on February 18, 1994 and August 17, 1998.

39. On May 1, 2000, the Commission asked the State and petitioners to provide up-to-date information about the case, asking the parties to answer within 45 days. In the same note, the Commission made itself available to the parties to facilitate a friendly settlement pursuant to Article 48(1)(f) of the American Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

40. In its initial report the State communicated that the military authorities denied any participation in the detention and later assassination of Raúl Antero Cajacuri Roca, while the

investigation undertaken by the Office of the Provincial Prosecutor for Human Rights of Huancayo pointed to unidentified personnel of the Peruvian Army as being responsible. Later the State asked the Commission to declare this case inadmissible, by virtue of the petitioner's silence and the consequent standstill in the processing of the complaint, and for failure to exhaust domestic remedies, based on the fact that as of the date of the complaint a preliminary inquiry was under way aimed at determining the facts.

9. Adrián Medina Puma (Case 11.051)

Facts alleged

41. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on July 8, 1992, in the district of San Isidro, in Lima, Adrián Medina Puma, 36 years of age, former employee and former secretary general of the trade union at the company Equipo de Transportadores Militares S.A. (ETRAMSA), of the Armed forces, was arrested by two men in civilian dress, allegedly associated with the Dirección Nacional Contra el Terrorismo (DINCOTE). The events occurred at 6 p.m. when Mr. Medina Puma was walking along Machaypata street with Eudes Navarro Gamboa, a former colleague from work, and his son Rosendo, 3 years old. The men identified themselves as members of DINCOTE and berated him over the labor dispute at ETRAMSA, which had dismissed him without justification. The victim's corpse was found the next day in the city, with gunshot wounds in the head, chest, abdomen, and lower and upper limbs.

42. The family reported what happened to the corresponding authorities, and reported that Adrián Medina Puma had been dismissed arbitrarily for directing a strike in 1989, which is why the Second Labor Court of Callao, in a judgment of January 21, 1993, ordered that he be re-hired; that decision was affirmed by the Superior Labor Court (Tribunal de Trabajo) weeks after his death. In addition, the deceased had been detained on two prior occasions, the first in September 1990, the second on June 3, 1992, due to the fact two brothers of his were being tried for terrorism.

43. The petitioner reiterated that in May 1991, in a report to the magazine Sí, Adrián Medina Puma denounced that he and his entire family were being persecuted by the Peruvian Army, since his unjustified dismissal by the directors of ETRAMSA, who refused to recognize the rulings of the labor courts. From that moment the persecution and harassment by the police and members of DIRCOTE began. Finally, the petitioner explained that there is sufficient evidence to conclude that the perpetrators of the crime are members of the State security forces. In addition, the petitioner argues that it is up to the Peruvian State to carry out an in-depth investigation to identify the perpetrators and prevent any repetition of extrajudicial executions such as this.

Processing before the Commission

44. On August 24, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, asking that it provide information on the facts alleged. The State responded on October 26, 1992, and sent additional information on June 17, 1993. The

petitioner presented observations to the State's response on September 24, 1993. Both parties submitted additional information on several occasions.

45. On May 1, 2000, the Commission asked that the State and petitioners provide up-to-date information on the case within 45 days. In the same note, the Commission placed itself at the disposal of the parties for the purpose of facilitating a friendly settlement, as provided for in Article 48(1)(f) of the American Convention. Once the term had expired, there was no agreement by the parties to pursue a friendly settlement.

The State's position

46. In the initial report, the State communicated that the police investigations were continuing but had yielded no positive results. In the next report, the State affirmed that a proceeding was under way in relation to this case before the District Justice of the Peace (Juzgado de Paz Comarcal) of Costa Cuca, but that the perpetrators had not been identified. Nonetheless, the State ruled out the possibility that they might be police agents from DINCOTE, because that unit did not have Chevrolet vehicles such as those used to consummate the criminal act. It added that the only witness, Eudes Najarrí Gamboa, did not provide any information that would make it possible to attribute the kidnapping and later homicide to DINCOTE personnel, and there was no motive whatsoever for detaining the victim, because the two times he was detained, there was no evidence that he was committing the crime of terrorism. The State operated under the hypothesis that they were reprisals from the terrorist group Shining Path because alongside the corpse was a note taking credit for the crime. In its last communication, the State asked that the petition be declared inadmissible for lack of foundation.

10. Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057)

Facts alleged

47. According to the petition presented to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on June 24, 1992, at 3 a.m., 10 to 15 heavily armed persons, including a woman in commando dress, allegedly linked to paramilitary groups, looking like members of the military, wearing uniforms and boots similar to those of the Army, violently entered the home of the Ventocilla Castillo family, in Santa Ana neighborhood, Sejetuto, district of Santa María, province of Huará, department of Lima, and kidnapped Rafael Ventocilla Rojas, his brother Marino, his children Alejandro, Simón, and Paulino, and his grandson Rubén. They were also alleged to have stolen a tape recorder with radio, and 480 soles. The next day, June 25, 1992, the victims' corpses were located on a farm situated in the hamlet of Balconcillo, 8 km from the road between Huaura and Sayan, in a common grave, covered with lime. The bodies showed signs of torture, wounds with cutting instruments and gunshot wounds in the temple. The facts described were reported to the local authorities by Mrs. Catalina Castillo León, the wife of Rafael Ventocilla Rojas, who, while they were unfolding, went to the police posts located a few kilometers from Santa Ana, at the Huaura bridge and at Cruz Blanca, in search of help, but the police refused to help her.

48. The petitioner reported that Rafael Ventocilla Rojas was an active member of the Popular Action Party (Partido Acción Popular), and for 10 years was mayor of the district of Cochamarca, province of Ollán, department of Lima; and that he stepped down from this position due to death threats from members of Shining Path. Because of this, the victim went to live in Santa Ana, where he work in farming and stock-raising with his son Paulino. Brothers Simón Ventocilla, former secretary-general of the Single Trade Union of Education Workers of Norte Chico, and Alejandro Ventocilla, were teachers and activists with the UNIR, a member of the Izquierda Unida alliance. In addition, the petitioner reports that earlier, on April 25, 1992, Rafael Ventocilla Rojas and his sons had been detained by members of the Peruvian Army, and were held 24 hours at the Military Base of Atahuampa, in the northern part of the province of Huaura, on charges of terrorism, and were subjected to severe interrogation. The petitioner reiterates that these facts are part of the practice of extrajudicial executions in the northern provinces of the department of Lima, which increased since early 1992, including the assassinations of journalist Pedro Yauri Bustamante, the Rodríguez Pacuar family, and six members of the communities of Caraqueño and Pampas de San José, who were also tortured and executed with the use of firearms.

49. Finally, the petition considered that a criminal investigation that had begun and was archived without specifying the perpetrators should be re-opened to take the steps needed to identify the perpetrators of the crimes.

Processing before the Commission

50. On November 13, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on February 13, 1993. The petitioner sent observations on the State's response on April 1, 1993. On May 4, 1994, the State submitted its observations to the petitioner's reply.

51. On April 25, 2000, the Commission requested the State and petitioners to provide up-to-date information about the case, asking the parties to answer within 45 days. In the same note, the Commission made itself available to the parties to facilitate a friendly settlement pursuant to Article 48(1)(f) of the American Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State provided updated information about this case on June 9, 2000.

The State's position

52. In its initial report, the Peruvian State indicated that the perpetrators of the homicide of the six members of the Ventocilla family were presumably members of the terrorist group Shining Path. Later, the State reported that on June 30, 1992, the provincial prosecutor asked that the investigation be opened; it was archived on July 15, 1992, considering that the persons responsible were not identified, and it was concluded that the crimes could not be attributed to members of the armed forces. In addition, the State admitted that previously, on April 27, 1992, Rafael Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, and Paulino Ventocilla Castillo were detained at the Atahuampa military base, district of Santa María, suspected of supporting terrorist elements in the zone; they were released on April 28, 1992. In

addition, it stated that on August 31, 1990, the father of one of the victims went before the judge in charge of the proceedings to reiterate his complaint, and to add that on August 29, 1990, he learned that his son's corpse was at the morgue. The State noted that according to the information that came out in the investigation, the facts alleged should be attributed to common crime, and not to members of the Peruvian security forces. In the report dated June 9, 2000, the State communicated that the investigation was archived provisionally, because the persons responsible were not identified, and therefore it deemed that it was not advisable to pursue a friendly settlement.

11. Ricardo Salazar Ruiz (Case 11.065)

Facts alleged

53. According to the petition submitted to the IACHR by the Oficina Prelatural de Acción Social, on June 22, 1992, a Peruvian Army patrol detained Ricardo Salazar Ruiz, 38, merchant, at his home located in the district of San José de Sisa, and executed him. The corpse was found on June 24, 1992 on the sidewalk where the victim's sister lives. During the official act of removing the body, signs of torture and gunshot wounds were documented in the back and both legs. According to the petition, at 4:00 a.m., Army soldiers told the sister about finding her brother's body. The facts were reported to the provincial prosecutor of Lamas by family members.

Processing before the Commission

54. On October 16, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The Peruvian state answered on December 23, 1992 and sent additional information on February 16, 1993, December 2, 1993 and on April 25, 1994.

55. On April 25, 2000, the Commission asked the State and the petitioner to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State provided up-to-date information on the case on June 9, 2000.

The State's position

56. In its initial response, the State indicated that it had asked the Office of the Provincial Prosecutor of Lamas to report on the results of the investigation into the murder of Ricardo Salazar Ruiz. In the following reports, the State sent a copy of the records of its initial inquiries. In the last report, the State maintained that based on the complaint by Amparo G. Díaz, the victim's sister, and other witnesses, on September 11, 1995 the mixed jurisdiction judge of Lamas initiated Criminal Proceeding N° 42/95, which established that Ricardo Salazar Ruiz was captured by an army patrol commanded by Captain Pedro Pablo Cairampoma Mendoza. The State added that after giving information on the whereabouts of arms and terrorist groups, Mr. Salazar Ruiz, under orders of the cited officer, left with the patrol commanded by Lt. Williams

Leyva Cárdenas, which was ambushed by subversive elements, and that Mr. Salazar Ruiz was killed in combat. Lt. Leyva, obeying the orders of Captain Cairampoma, handed over the corpse to the victim's sister. Later, Lt. Leyva was killed in combat. Finally, the State reported that by resolution of November 21, 1995, the Mixed Provincial Court of Lamas, applying Law 26,479, declared amnesty for Captain Pedro Pablo Cairampoma Mendoza, in a decision that was not contested. The victim's family was notified and informed that they could bring a civil action to receive compensation. In view of the foregoing, the State did not deem it advisable to pursue a friendly settlement.

Facts alleged

57. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), from July 5 to 7, 1992, seven members of the peasant community of Pallcca, Sacsamarca district, named Amadeo Inca Ñaupá (or Amadeo Arcanaupa), Luciano Huamán García, Antonio Janampa Aucassi, Constantina García Gutiérrez, Marciano (or Mariano) Janampa García, Agripina Aucassi Espilico, Maura Huamán Paucar, and five members of the peasant community of Manchiri, Carapo district, Huanca Sancos province, Libertadores-Wari region, called Demetrio Huamán León, Víctor Rojas Huamán (or Víctor Huamán Paucar), Mauro Huamán Paucar, Narciso Huamán Paucar, and Melecio Chonta Huamán, were summarily executed by a group of 12 heavily armed persons in civilian dress including two women. This group passed through the provinces, sacking and selectively assassinating teachers and peasants, apparently in retaliation for collaborating with subversive groups. The armed group passed through areas close to military units without being noticed by the authorities. After their outing, witnesses saw them enter the Pampa Cangallo military base, in Cangallo province, Ayacucho.

Processing before the Commission

58. On December 1, 1992 the Commission opened the case and transmitted the pertinent parts of the complaint to the Peruvian state, requesting that it provide information on the facts alleged. The State responded on February 4, 1994.

59. On April 25, 2000, the Commission requested of both parties that they provide up-to-date information. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State answered on August 23, 2000.

The State's position

60. In its initial report the State denied it was responsible, arguing that on the date in question no patrol left the Pampa Cangallo base to participate in missions, and that there were no combats, and that furthermore such patrols do not include women. In the observations forwarded on August 23, 2000, the State clarified the names of three of the victims, [FN1] reiterated its arguments, and concluded that it had not been proven that State agents were responsible, because the two witnesses' version of the events, cited by the petitioner, were not corroborated. It added that by resolution of March 30, 1999, the Office of the Prosecutor ordered the provisional

archiving of the investigation. The State did not deem it advisable to pursue a friendly settlement.

[FN1] The State indicated that the correct name of Amadeo Arcanaupa is “Amadeo Inca Ñaupa”; that Mariano really is “Marciano” Janampa García; and that the correct name of Víctor Huamán Paucar is “Víctor Rojas Huamán”.

13. Pascual Chipana Huauya, Pelagia Chipana Condori, Paulina Vásquez Esquivel, Donato Pablo, Juan Cacñahuaray, Jovita Cahuana, Pelayo Capizo, and Pelagia Pillaca (Case 11.161)

Facts alleged

61. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH) on the morning of June 16, 1992, six uniformed soldiers of the Peruvian Army from the military base of Huancapi were seen outside the peasant community of Huancaraya. At 10:00 p.m. witnesses saw the six soldiers enter the homes of Donato Pablo, Juan Cacñahuaray, and Jovita Cahuana, respectively, who were each assassinated by approximately six gunshot wounds to the head. The shots were not heard. The following day, on June 17, 1992, the six soldiers arrived at the peasant community of Circamarca and at midnight entered the home of husband and wife Pelayo Capizo and Pelagia Pillaca, who were also killed with six shots to the head, the shots not being heard. The same day, at 3:00 a.m., the soldiers arrived at the Llusita peasant community and entered the home of Pelagia Chipana Condori, who was killed with six or seven shots, which were not heard. Next, the soldiers entered the home of Pascual Chipana Huauya and killed him in the same way, according to his mother-in-law, who was asleep in the home, and did not hear any noise. Finally, the soldiers entered the dwelling of Paulina Vásquez Esquivel, who they killed with six or seven gunshots as she came out to the yard. The gunshots were not heard. The petition adds that Mrs. Feliciana Quispe Huamani had to flee the community of Circamarca because of the continual siege by the Army and the DECAS antisubversive civil patrols. In order to force Feliciana Quispe to turn herself in, on April 22, 1992, a group from the DECAS from the community of Circamarca captured her sister, Nazaria Quispe Huamani, who was held in the Huancapi military base, and a week later she was again detained and taken to the Circamarca Military base. On both occasions, she was released the following day.

Processing before the Commission

62. On May 27, 1993, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian state, and requested information on the facts alleged. The State answered on September 24, 1993 and sent additional information on January 31, 1994.

63. On April 25, 2000, the Commission asked the State and the petitioners to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of

the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

64. The State maintained that according to the statements of Zozimo Cahuana Condori, Justice of the Peace of Huancaraya district, and Victoriano Cacñahuaray Capiso, Justice of the Peace of Circamarca district, Cecilio Condori Chipana and other authorities of the Llusita community, the peasants Pascual Chipana Huauyal; Jovita Cahuana de Barrios; Donato Pablo; Juan Cacñahuaray; Palagio Capiso Pedro; Pillaca Pelayo; Pelagia Chipana Condori; and Paulina Vásquez Esquivel, were assassinated by members of Shining Path. In this respect, the State offered several considerations on the methods employed in the killings, and on the make-up of the group—six men and one woman—which showed that the murderers were not state agents. Finally, the State indicated that the complaint regarding the pursuit of Feliciana Quispe Huamani was false, because the Army had given her protection.

14. Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292)

Facts alleged

65. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH) on July 5, 1993, members of the Peruvian police, in the district of Porvenir Trujillo, Libertad department, detained and physically abused Jessica Rosa Chávez Ruiz, 17, student, Pedro Javier Cruz Guzmán, 28, worker, and Héctor Rodríguez Rodríguez, 28, student; they had been participating in a social activity at the A.H. Víctor Raul Haya de la Torre. Their corpses appeared later. The Police authorities justified the deaths of the three as arising from an armed confrontation with three members of the Túpac Amaru subversive group, who died. However, the corpses of the three victims showed signs of physical abuse and gunshot wounds fired from less than one meter in the chest with an oblique downward trajectory.

Processing before the Commission

66. On May 19, 1994, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on December 27, 1994.

67. On May 1, 2000, the Commission asked the State and the petitioner to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

68. The State maintained that proceedings were brought against the members of the Peruvian Police, and that both the prosecutor and the judge had issued statements holding liable two of the officers on trial, and the case was referred to the Second Criminal Chamber on September 6, 1994.

15. Moisés Carvajal Quispe (Case 11.680)

Facts alleged

69. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), Moisés Carvajal Quispe was detained at the checkpoint of the Santa Rosa Military Base, in the city of Abancay, Apurímac department, on October 21, 1989 while traveling from Abancay to Aymaraes in the company of Simón Flores Quispe, his mother's husband. From October 24 to 27, 1989, his mother took him food at the Abancay military base, but on October 28, 1989, the authorities there refused to continue receiving it, arguing that Mr. Carvajal Quispe had been released. Neighbors told the mother that he had supposedly been released, but in reality he had been executed by the Army, which said he was killed while trying to escape. The autopsy showed that the corpse presented a gunshot wound that entered the back and exited the chest.

70. These facts were reported to the local authorities. The Special Prosecutor for Human Rights referred the case to Abancay. On February 16, 1996, the Office of the Second Prosecutor for Abancay, prepared a summary of the facts, in which it stated that it did not have the autopsy, and that the deceased was apparently executed at the Abancay military base, and ordered that the case be provisionally archived because he had not been able to identify the perpetrators.

Processing before the Commission

71. On September 20, 2000, the Commission opened the case, forwarded the pertinent parts of the complaint to the State, and requested it provide information on the facts alleged. The State answered on February 6, 1997. The petitioner submitted observations to the State's response on June 2, 1997. The State submitted its reply to the petitioner's observations on October 1, 1997 and an additional report on March 18, 1998.

72. On May 1, 2000, the Commission asked the State and the petitioners to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

73. The State maintained that domestic remedies had not been exhausted because the investigations were ongoing for the purpose of identifying the perpetrators. It added that the petitioner did not contest the provisional archiving of the case on February 16, 1996 by the

Office of the Second Prosecutor for Criminal Matters of Abancay, and asked that the case be declared inadmissible.

B. Cases of forced disappearances of persons

16. Luis Alberto Sangama Panaifo and Lucio Escobal Fretel (Case 10.564)

Facts alleged

74. According to the petition submitted to the IACHR by the Comisión Episcopal de Acción Social (CEAS), on November 19, 1989, Mr. Luis Alberto Sangama Panaifo, 28, married, was detained by members of the Peruvian police in Hoitopa, Padre Abad province, Ucayali department, and flown by helicopter on November 22, 1989 to the military base located at Km. 11, Federico Basadre road, where the military denied he had been detained.

75. On October 13, 1989, Lucio Escobal Fretel, 26, married, was detained by the police for not possessing personal identification documents. Initially, the military authorities denied that he had been detained, but finally told his wife that he had been moved to the Ayacucho Army base, where he was seen by his cousin, who was also detained, and by several soldiers. However, this military unit denied that he was detained. Later he was seen wearing an army uniform, working as a guide. The petitioner emphasized that Mr. Escobal Fretel did not participate in military service because of pulmonary problems.

76. The facts surrounding the disappearance of the two victims were reported to the local authorities, and writs of habeas corpus were filed.

Processing before the Commission

77. On June 15, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian state, and requested information on the facts alleged. That request was repeated on March 18, 1991. The State answered on March 19, 1992.

78. On May 2, 2000, the Commission asked both parties to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. On June 22, 2000, the State asked for a one-month extension to submit the information. On June 29, 2000, the Commission granted an extension that expired on July 28, 2000. The State sent in the information requested on August 10, 2000, which was forwarded to the petitioner on September 19, 2000.

The State's position

79. In its initial report, the State denied that Luis Alberto Sangama Panaifo had been detained by the security forces, and argued failure to exhaust domestic remedies, given that no habeas corpus action was filed with the Courts of Criminal Inquiry that have jurisdiction over Coronel

Portillo province, where the military base is located at Km. 11 of the Federico Basadre highway. The State did not produce any information concerning the situation of Lucio Escobal Fretel and asked that the two cases be separated considering that there was no relationship between the facts that occurred on different dates, to different individuals and in different places. In the August 9, 2000 report, the State affirmed its previous arguments and reiterated, transcribing in detail the responses of the different offices, that in the official archives there is no information on the supposed disappearance of these two people. It added that regarding the disappearance of Lucio Escobal Fretel, his relatives did not pursue a habeas corpus remedy. Accordingly, the State did not deem it advisable to pursue a friendly settlement.

17. Arturo Torres Quispe (Case 10.744)

Facts alleged

80. According to the petition submitted to the IACHR by the Centro Episcopal de Acción Social (CEAS), on May 19, 1990, Arturo Torres Quispe, 16, student, was captured on the old Duraznopata highway by Duraznopata civil defense patrol members while with his brother returning home from their school, the Colegio González Vigil. Both youths were detained by five or six men commanded by a man called "Villar Castillo." Arturo Torres Quispe's brother was able to escape and notify his parents. The relatives inquired at the Castropampa military base without receiving any information. These facts were reported to the local authorities without obtaining any response as to the whereabouts of Arturo Torres Quispe.

Processing before the Commission

81. On December 3, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian state, and requested information on the facts alleged. On January 2, 1997, the Commission reiterated the request for information to the State, which did not respond.

82. On May 2, 2000, the Commission asked both parties to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State responded on June 20, 2000, and on July 14, 2000, its response was forwarded to the petitioner.

The State's position

83. Since the case was opened on December 3, 1990, the State has not responded. On June 14, 2000, the State submitted the information requested for the first time, and reported on the course of the criminal investigation that had been opened, based on the complaint lodged by the victim's mother against the Duraznopata civil defense patrols, or rondas, commanded by Villar Castillo. It added that in spite of the inquiries at the Castropampa military base, it could not find the youth; that the authorities at the "Los Cabitos 51" counter-subversive base stated that the Huanta Self-Defense Committees are under their supervision; that there is no information

regarding citizen Arturo Torres Quispe; and that there is no record of the May 19, 1990 patrol. Finally, the State did not deem it advisable to pursue a friendly settlement.

18. Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, and César Sánchez Castro (Case 11.040)

Facts alleged

84. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), the ten victims were captured on February 27, 1992—and later disappeared—by a group of approximately 30 ronderos of the civil defense committees based at Rangra, Concepción, led by Julio Cantorín Clemente. It was reported that on February 27, 1992, the ronderos arrived at the Paccha peasant community, Tambo district, Huancayo province, Junín department and forcibly entered the homes of the ten victims--Apolonio Lazo Rodas, 25; Hermilio Borja Ríos, 25; Fredy Gaspar Ríos, 22; César Sánchez Castro, 25; José Muñoz Huallpa, 18; Ernesto Salomé Bravo, 27; Jesús Pumahuali Salomé, 40; Gumercindo Ubaldo Zanabria, 16; Angel Zanabria Ubaldo, 16; and Percy Borja Gaspar, 14—who they beat, detained, and later disappeared. The petitioner added that the civil defense committees are under the authority of the Political-Military Command of that zone, and that Mrs. Inés Castro, wife of rondero Julio Cantorín, stated that her husband carried an identification card issued by the president of the rondas campesinas of the Huahuanca Multisectoral base. Because of the facts alleged, a criminal investigation was opened in the Third Court of Criminal Inquiry of Huancayo against Julio Cantorín Clemente.

Processing before the Commission

85. On July 7, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on September 16, 1992 and sent additional information on October 9, 1992.

86. On May 16, 2000, the Commission asked both parties to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

87. In its initial report, the State maintained that it had initiated a case in the domestic jurisdiction against rondero Julio Cantorín Clemente and others in Huancayo, under the charges of violating personal liberty, unauthorized entry, and robbery. In the following report, the Peruvian state also rejected outright any responsibility of the armed forces in the facts, arguing that the rondas campesinas are not under the authority of the Political-Military Command or of the armed forces, and that their creation, according to the terms of Law 24,571 of November 6, 1986, was a decision of community members themselves.

19. Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostriza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126)

Facts alleged

88. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), from December 1990 to June 15, 1991, detentions and disappearances were carried out by the Peruvian Army and police in several localities of Huancayo province, Junín department.

89. In the context of that practice, two eyewitnesses state that Máximo Muñoz Solís was detained on August 12, 1990, in the main square of Satipo province by soldiers from the Satipo military base in Junín department, and taken to the military base of that province, and he remains disappeared ever since. The incident was reported to the Provincial prosecutor of Satipo.

90. Levi Vivas Espinal was detained at his home on January 21, 1991 by members of the Peruvian Army from the Vista Alegre military base, where he was abducted; ever since, he has been disappeared. A family member reported the incident to local authorities.

91. Alejandro Vera Suasnabar and Edgar Nestares Justo were detained at their homes by heavily armed men wearing ski masks on January 23, 1991. They have been disappeared ever since. The security forces deny having detained them. The incident was reported by relatives to the Special Prosecutor for Human Rights.

92. On February 7, 1991, Javier Yañac Solano and Richard Lozano Cáceres were detained at their respective homes, which were located half-a-block from one another, by members of the National Police from the Regional Intelligence Office (ORI) and taken away in the same vehicle. The following day, the same members of the Police returned to Richard Lozano's home with detainee Javier Yañac. Mrs. Adelina Llacma, Richard Lozano's common-law wife, went to the offices of that institution to inquire into his well-being, and, while there, she recognized two of the ORI police agents who had taken the two disappeared people. The incident was reported to the Special Prosecutor for Human Rights.

93. Oscar Cirino Baldeón Chacón was detained on February 23, 1991 by combined forces of the police and army who, wearing ski masks and carrying weapons, had violently entered his home. The incident was reported to the Special Prosecutor for Human Rights. The victim has remained disappeared ever since.

94. Luis Alberto Ramírez Hinostriza was detained on February 22, 1991 by members of the Peruvian Army while he was playing sports at in a place near his home. The victim's mother was told that he had been taken to the "Cuartel 9 de Diciembre" military base, but the military authorities denied that he had been detained. He has remained disappeared since that date. The incident was reported to the Special Prosecutor for Human Rights.

95. Teófilo Julio Lazo Chucos was detained at his home on March 15, 1991 by members of the Peruvian Army who were wearing ski masks, and has been “disappeared” ever since. The incident was reported to the Special Prosecutor for Human Rights.

96. Witnesses state that César Teobaldo Vílchez Simeón was detained on May 25, 1991 by police from the Regional Intelligence Office (ORI) and violently put in a white Dodge pick-up, operated by the ORI, and was taken to the locality of Umto with other detainees, who were gradually released. However, César Teobaldo Vílchez was placed in the custody of the Seventh Command of the General Police at Avenida Ferrocarril, and has remained disappeared ever since. The incident was reported to the Special Prosecutor for Human Rights.

97. Mr. José Fierro Miche was detained on May 30, 1991 by soldiers from Ollantaytambo military base, Puerto San Juan de Ubiriki, Chanchamayo province. On that occasion, they placed him in a military truck and took him to Chatingarí military base. Later, he disappeared. The incident was reported to the Special Prosecutor for Human Rights.

98. On June 15, 1991, Elías Uchupe Huamán was detained by military forces as he was leaving his home in Huancayo. Later, members of the security forces forcibly entered a residence to search Uchupe Huamán’s room and rebuked the owner for renting to a terrorist. The owner reported the facts as well as the theft of some of her property to the Special Prosecutor for Human Rights. The victim has remained disappeared ever since.

Processing before the Commission

99. On February 19, 1993, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on September 20, 1993.

100. On May 26, 1999, the Commission asked the State and the petitioners to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The parties were asked to respond on both issues within 30 days. On July 13, 1999, the petitioner expressed interest in pursuing a friendly settlement, a position that was forwarded to the State on August 12, 1999. On September 7, 1999, the State presented additional written material, without agreeing to pursue a friendly settlement.

101. On May 4, 2000, the Commission asked the State and the petitioners to submit up-to-date information on this case, and on the results of the domestic remedies. Both parties were asked to respond within 45 days.

The State’s position

102. In its initial report, the State denied any responsibility of the security forces in 11 of 12 of the disappearances. Regarding the detention of Mr. Luis Alberto Ramírez Hinostroza, it

explained that he was detained February 22, 1991 because he was extorting a minor, and was then placed at the disposal of the respective authorities. In its July 27, 1999 report, Peru repeated this information, and added that Luis Alberto Ramírez Hinojosa had been detained several times on extortion charges, first on February 22, 1991, second on July 18, 1996, and third on October 21, 1996. According to the State, this refutes his alleged disappearance. The State argued that the case was inadmissible for failure to exhaust the domestic remedies, as no writ of habeas corpus had been filed. Finally, the State did not deem it advisable to pursue a friendly settlement.

20. Edith Galván Montero (Case 11.132)

Facts alleged

103. According to the petition submitted to the IACHR by the Asociación Pro Derechos Humanos (APRODEH), on October 11, 1992, Edith Galván Montero, whose sister Judith Galván Montero had been convicted of terrorism and treason, left her home located at Jr. José de Rivera Dávalos, N° 767, neighboring Lima, for her godfather's house in Villa El Salvador, department of Lima. There, between 8:30 and 9:00 a.m., she was intercepted by members of the Peruvian Army, who placed her on a military truck with two other youths. The following day, the newspaper published an article about the detention of three persons by military personnel--two men and a woman--who tried to steal a car from a taxi driver. The neighbors in the area identified her from a photo as the woman who was detained along with two young men by Army soldiers. However, Edith Galván Montero has been disappeared since that date.

Processing before the Commission

104. On March 31, 1993, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State responded on July 17, 1993 and sent additional information on several occasions. The petitioner presented observations on the State's responses on August 1, 1997.

105. On May 26, 1999, the Commission asked both parties to submit up-to-date information. In this last communication, the Commission made itself available to the parties to pursue a friendly settlement, and give each party 30 days to accept its offer. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. Both parties responded.

The State's position

106. In its initial response, the State maintained that Edith Galván Montero had not been registered as detained by the security forces. Later, it reported its information, indicating that on November 14, 1989, she was arrested on terrorism charges and on December 27, 1990 the Criminal Court of Lima acquitted her, and she was released. It stated that even though she had not been arrested since, the State has police report 032-D3-DINCOTE dated March 14, 1994, for the crime of terrorism and treason. The State added that she was not held ("no habida") and that the police actions were taken because Edith Galván Montero had participated in a terrorist act, together with another member of Shining Path, on May 22, 1992, and that after having

committed the crime, both of them had fled, and went underground. Since there was a criminal case against her, it requested that this case be declared inadmissible on the grounds that the domestic remedies had not been exhausted. The State did not deem it advisable to pursue a friendly settlement.

21. Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179)

Facts alleged

107. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), on February 28, 1992 the following persons were detained and then disappeared: Esteban Pallango Araujo (Esteban Allano Araujo), 17; Esteban (Ruben) Romero León, [FN2] 17; and Reynaldo Fidel Véliz, 17. On Tuesday, March 10, Moisés Poma Ordóñez, 31, was detained and disappeared. And on March 11, 1992, Yolanda Lauri Arias, 23, was detained and disappeared. It was alleged that these detentions and forced disappearances were carried out by Army soldiers and by the Paccha, Huancayo, civil defense patrols, or rondas, organized under the orders of the Army. The complainant also said that “Esteban Pallango Arango and Teófilo Romero León,” allegedly detained and disappeared, were actually at the “9 de Diciembre de Huancayo” military base, as “recovered” deserters, and are completing their compulsory military service. In this respect, the Commission observed that in the same document referred to by the petitioner, the name of Reynaldo Fidel Véliz appears as one of the “recovered” deserters.

[FN2] The petitioner stated that the correct name of Esteban Allano Araujo is “Esteban Pallango Araujo” and that the correct name for Rubén Romero León is “Esteban Romero León.”

108. The petitioner notes that the facts alleged were reported to the local authorities, and that writs of habeas corpus were filed but not ruled on.

Processing before the Commission

109. On July 29, 1993, the Commission opened the case, forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The State answered on April 5, 1994, and sent additional information on August 17, 1998.

110. On May 1, 2000, the Commission asked both parties to submit up-to-date information within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State responded on August 3, 2000.

The State’s position

111. In its initial report, the State maintained that it had initiated domestic proceedings. It added that a common grave had been found containing 10 corpses and that it was sparing no effort to capture Julio Cantorín Clemente, the alleged perpetrator of the crime. In the second report, the State requested that the case be declared inadmissible for failure to exhaust domestic remedies. In the third report, the State asked that the case be declared inadmissible on the grounds of tacit abandonment by the petitioner and added that the rondas campesinas of Suitucancha, Huahuanca, Ñahuinpuquio, Siusa and Tizo were subordinate to the Peruvian Army military bases, and that the ronderos had impeded the investigation.

C. Cases that involve extrajudicial execution and forced disappearance

22. Víctor Tineo Sandoval, Guillermina Quispe de Tineo, Eulogio Demetrio Bohorquez Tineo, Ivan Roberto Tineo Rodríguez, and Elías Bohorquez Tineo (Case 10.431)

Facts alleged

112. According to the petition submitted to the IACHR by the Centro Episcopal de Acción Social (CEAS), from July 15, 1984 to May 16, 1985, several members of the complainant's family were arbitrarily detained by soldiers of the Marine Infantry billeted in the localities of San Miguel and Santa Rosa, province of La Mar, Ayacucho department.

113. On July 15, 1984, Eulogio Bohorquez Tineo, 21, farmer, son of Gregoria Tineo Sandoval, was detained at his home in the Santa Rosa Annex, Ayna district, La Mar province, by soldiers of the Marine Infantry billeted in the area, and taken into the Santa Rosa military base. On June 20, 1985, Gregoria Tineo Sandoval reported her son's disappearance to the Superior Prosecutor of Ayacucho.

114. On January 30, 1985, soldiers of the Marine Infantry detained Ivan Roberto Tineo Rodríguez, 23, son of Víctor Tineo Sandoval and Guillermina Quispe de Tineo and took him to the La Mar military base under the pretense that he had to carry out an assignment related to his function as a member of the Huatasoccos civil defense. After that, he disappeared. On July 22, 1985, Abelina Tineo, his sister, reported the incident to the Superior Prosecutor of Ayacucho.

115. On February 20, 1985, Elías Bohorquez Tineo Sandoval, 28, husband of Flora Herrera Taype, farmer, was detained in the Paccha Annex, Tambo district, La Mar province, by soldiers of the Marine Infantry billeted in that province. Blindfolded, he was taken to San Miguel de la Mar military base. His wife, Flora Herrera Taype, followed them to that base, where soldiers told her that he had been transferred to the "Los Cabitos #51" Marine Infantry base at Ayacucho. There, the military authorities denied knowing his whereabouts or his legal status. On March 5, 1985, Flora Herrera Taype and on June 20, 1985, Gregoria Tineo Sandoval, the victim's wife and mother, respectively, reported the disappearance to the Superior Prosecutor of Ayacucho.

116. On May 16, 1985, Víctor Tineo Sandoval, 46, and his wife, Guillermina Quispe de Tineo, 47, were detained at the home of Luis Rodríguez Tineo, where they were staying, at the request of the Pataccocha civil defense members and taken to the Santa Rosa Marine Infantry base, Ayna district, La Mar province, where they were tortured. The military personnel there denied the

facts alleged. Ever since, the detainees have been disappeared, as appears in the complaint lodged on July 22, 1985 by Abelina Tineo Rodríguez with Superior Prosecutor of Ayacucho.

117. The petitioner stated that the Office of Human Rights learned from Senator Jorge del Prado about the existence of death certificates for Víctor Tineo Sandoval and Guillermina Quispe de Tineo in unofficial notebooks without medical certificates and of the death of Eulogio Bohorquez Tineo at a date after the above events.

118. The petitioner reported that the Ship's captain of the Peruvian Navy using the pseudonym José Antonio on September 4, 1987, kept judicial officers from taking testimony from members of the Tineo family, and that the case continues in the investigative phase.

Processing before the Commission

119. On August 4, 1989, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian State, and requested information on the facts alleged. The State answered on December 26, 1990. Both parties sent additional information on various occasions. On May 17, 2000, the Commission asked the State and the petitioner to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State's position

120. In its initial report, the State indicated that it had designated a special lawyer to carry out a complete investigation into the facts. In the next communication, the State denied the victims were detained by members of the Peruvian armed forces or the police. Furthermore, the State maintained that the facts alleged cannot be attributed to personnel of the Marine Infantry, because from July 15, 1984 to May 16, 1985, those troops were not quartered at the Santa Rosa military base. On December 30, 1999, the State argued that domestic remedies had not been exhausted, specifically habeas corpus, and that accordingly, the case should be declared inadmissible.

23. Concepción Ccacya Barrientos, Maximiliana Sotaya, Donato Morán, Emiliana Puga, and Fortunato Venegas (Case 10.523)

Facts alleged

121. According to the petition submitted to the IACHR by the Centro Episcopal de Acción Social (CEAS), on October 3, 1989, Peruvian Army soldiers arrived at the Ccochapucro hamlet, Umamarca district, Andahuaylas province, Apurímac department, where, apart from detaining numerous community members, they assassinated Maximiliana Sotaya, 50, and dynamited her corpse; they also assassinated Donato Morán, 75, and Emilia Puga, and dismembered their corpses. The petition adds that Concepción Ccacya Barrientos, 52, has been disappeared since that date.

122. Leonardo Ccaccya Barrientos, 28, married, catechist of the San Pedro de Andahuaylas Parish, reported these incidents to the local authorities. In the wake of his allegations, Army members constantly threatened him. On November 4, 1989, he was detained by members of the Army and his home forcibly entered. On the same date, Army troops raped a 47-year-old woman and her 10-year-old daughter, killed Fortunato Venegas, and displaced 100 peasants. On November 13, 1989, Leonardo Ccaccya was released, along with his brother Claudio and 12 other detainees.

Processing before the Commission

123. On March 7, 1990, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian state, and requested information on the facts alleged, and reiterated the request to the State on April 15, 1991. On November 15, 1996, the Commission repeated its request for up-to-date information to both parties, and gave them 30 days to reply. The State answered on December 5, 1996, and sent additional information on March 13, 1997.

124. On June 7, 2000, the Commission asked the State and the petitioner to submit up-to-date information within 45 days. In addition, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. The State replied on July 14, 2000.

The State's position

125. In its first report, the State maintained that there was no complaint alleging the detention and disappearance of Concepción Ccaccya Barrientos or the disappearance of Leonardo Ccaccya Barrientos, Maximiliana Sotaya, Donato Morán, Emiliana Puga and Fortunato Venegas. In its additional report, the State confirmed the first report and added that on December 30, 1996, Mrs. Lidia Ayquipa Taype, the wife of Leonardo Ccaccya and sister-in-law of Concepción Ccaccya, told the State that her husband, Leonardo, had been living for over a year in the city of Lima, and that her brother-in-law, Concepción, has been disappeared since his parents' death, five years ago, and who never said where he was going. Finally, the communication described two criminal proceedings against Concepción Ccaccya Barrientos in the Peruvian courts: Proceeding N° 155/93 for crimes against property, archived on December 28, 1992, and N° 130/92 for cattle rustling, which has been in the Office of Arrest Warrants since May 23, 1996. In its final report, the State did not consider it necessary to submit up-to-date information on the case, as it argues that the lack of interest on the part of the petitioner, who could not prove its allegations, shows that the State is not responsible for the facts alleged. Accordingly, the State did not consider it appropriate to pursue a friendly settlement and asked that the complaint be declared inadmissible.

24. Flaviano Sáens Chuquivilca, Héctor Riveros Izarra, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos

Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, and Peter David Cosme Ureta (Case 11.064)

Facts alleged

126. According to the petition submitted to the IACHR by the Centro de Estudios y Acción para la Paz (CEAPAZ), from June 6 to September 22, 1992, a practice of detentions and forced disappearances, as well as extrajudicial executions, was directed against Universidad Nacional del Centro students by members of the army and police in the department of Junín. Based on the chronological sequence of the facts, the complainant groups the 17 victims in two lists. According to the complaint, eight students were initially detained and disappeared: Flaviano Sáens Chuquivilca, Héctor Riveros Izarra, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera and Augusto Galindo Peña. Ten more students were summarily executed: Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, and Peter David Cosme Ureta.

127. In its observations to the State's responses on the practice of disappearances and executions, the petitioner explained that these acts had increased since August 7, 1992, the date the Army occupied the University, registering students and professors, who were photographed and documented. The practice had a common pattern: It was selective, aimed at student leaders, and was distinguished by considerable operational capacity, which permitted the Army, for example, to kidnap, torture, and execute 35 people. Regarding the situation of seven of the eight students who were detained and disappeared, and the list of the ten students executed, the petitioner reiterated that the State was responsible, explaining the grounds in each case, which are summarized in the following, and emphasized that over 18 months had gone by since its observations, without the Public Ministry undertaking a serious inquiry into the facts, which continued to go unpunished.

128. The petitioner adduced that the State's assertion that Flaviano Sáens Chuquivilca was a member of the terrorist group Shining Path, and had gone underground, were not supported by reliable evidence, because in other cases before the Commission, documents have been forged by supposed civil authorities certifying the release, and the supposed accusations of the disappeared victim by private persons have not been duly processed by the Public Ministry. Furthermore, such evidence is controverted by the account of the facts given to the victim's sister by their cousin, Percy Jaramillo Sáenz, who was detained with Flaviano Sáens on June 6, 1992, by 30 members of the Peruvian Army, dressed as civilians, and wearing ski masks. Days later, Percy Jaramillo Sáenz was released and stated that they had been detained at the Carhuamayo military base, where they had been subjected to torture and abuse.

129. The petitioner argued that the mere assertion of the State that student Edgar Chaguayo Quispe had not been detained by the security forces did not refute the facts alleged about his detention and disappearance on August 25, 1992 by members of the National Police. The petitioner also criticized the inefficiency of the judicial system in the investigation. Finally, the petitioner explained that according to the inquiry of the Human Rights Secretariat of the

Huancayo Popular Defense Front (Frente de Defensa de los Intereses del Pueblo de Huancayo), the victim's corpse was found with three gunshot wounds to the head, and that even so, there had not been an official report.

130. The petitioner considers that the State did not refute the facts alleged when it, without any proof, irresponsibly tied Miriam Lidia Navarro Concha to terrorist groups, attributing her death to a settling of accounts. The victim was detained by three men of military appearance, presumed to be members of the State security forces, and was disappeared on August 25, 1992 as she got off a bus near her home; the incident was witnessed by Juana Ñahui Vilca. The petitioner adds that days later the corpse of Miriam Lidia Navarro appeared with two gunshot wounds; one to the head and another to her heart.

131. For the petitioner, Miguel Angel Cieza Galván's claimed reappearance (he had been detained on August 25, 1992 by members of the Peruvian Army as he left the University) is a fact that could not be confirmed. For although the State declared that on October 7, 1992 the victim's mother had stated to the Provincial Prosecutor that her son had reappeared, he was still detained and disappeared.

132. Given the lack of evidence to back up the State's presumption that a settling of accounts was the motive for the murder of student leader Socimo Curasma Sulla, who was detained and executed by members of the Peruvian Army on August 27, 1992, in the city of Huancayo, the petitioner considers that the facts alleged have not been refuted.

133. Justiniano Fredy Vicente Rivera and Augusto Galindo Peña, students at the Universidad Nacional del Centro, of Huancayo, were detained on September 7, 1992 as they were leaving class. On September 10, 1992, members of the army forcibly entered the home of Mrs. Elsa Rivera de Vicente, mother of Justiniano Fredy Vicente. The petitioner confirms that Justiniano Fredy Vicente Rivera was indeed executed, and that the corpse showed signs of strangulation and three gunshot wounds. Yet, regarding Augusto Galindo Peña, the petitioner adduced that because the State responded without providing evidence that might help locate or recognize corpse, this victim continues to be detained and disappeared.

134. The petitioner confirmed that Héctor Riveros Izarra, detained and disappeared on August 7, 1992 in the University when members of the army were registering students, according to inquiries made by the Solidarity Vicariate of the Archdiocese of Huancayo and the Secretariat for Human Rights of the FEDIPH, had availed himself of the "Law of Repentance" on November 12, 1992.

135. In response to the State's observations, the petitioner argued that as regards the summary executions of the ten students, the mere assertion by the State that the homicide of Juana Ñahui Vilcas (wife of detained and disappeared Socimo Curasma) was due to a settling of accounts between terrorist groups, does not disprove the participation of the Peruvian armed forces in her murder on September 10, 1992. On the contrary, the petitioner considered that the reason they executed her is that she was the only witness to the kidnaping and detention of Miriam Lidia Navarro Concha. The petitioner also presented the arguments with respect to the execution of Alejandro Tunque Lizama, whose corpse, with signs of strangulation, was found on September

30, 1992, in Sapallanga district, Huancayo province; and the execution of Gladys Espinoza León, detained and disappeared on September 6, 1992, whose corpse was found with two gunshot wounds to the head, and another two to the stomach.

136. Luis Aníbal Ñaupari Toralva was detained and disappeared on August 27, 1992 by two individuals in civilian dress as he was going home. The corpse was found on September 10, 1992 with six gunshot wounds to the chest and head. As the State did not offer any explanation about this victim, the petitioner concludes that his extrajudicial execution should be attributed to members of the military.

137. The petitioner considers that the State has not refuted the facts alleged merely by asserting that husband and wife Eugenio Curasma Sulla and María Sánchez Retamozo were not detained by the security forces on September 22, 1992. According to the complaint, both were kidnaped in their home by a group of armed men and their corpses had gunshot wounds.

138. The petitioner alleges that the inconclusive denial, without any evidence to support it, is no basis for refuting the responsibility of the Peruvian State to the effect that Edwin Ramos Calderón, detained and disappeared on July 26, 1992, whose corpse was found displaying gunshot wounds, “was not intercepted or detained by members of the Armed forces of Peru.” The petitioner made the same arguments in the case of Peter David Cosme Ureta, detained and disappeared on September 6, 1992, whose corpse was found with four gunshot wounds.

139. According to the petitioner, the State’s presumption that Fernando Sáenz Munarris and Hugo Puente Vega, detained and disappeared on July 26, 1992, whose corpses were found with signs of strangulation, had been executed as the result of a settling of accounts between terrorist groups, is not supported by the evidence.

Processing before the Commission

140. On October 16, 1992, the Commission opened the case and forwarded the pertinent parts of the complaint to the Peruvian State, and requested information on the facts alleged. The Peruvian state answered on June 1, 1993. Both parties provided additional information on various occasions.

141. On April 4, 2000, the Commission asked the State and the petitioner to submit up-to-date information on this case. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement.

The State’s position

142. The State denied the participation of members of the Peruvian Army or police in the facts alleged. In its first report it claimed that the army was not responsible for the detention and disappearance of Peter Cosme Ureta and Freddy Vicente Rivera. The State also asserted that Flaviano Sáens Chuquilca, and students Héctor Viveros Izarra and Miguel Cieza Galván are

alive. Regarding the whereabouts of Flaviano Sáens Chuquivilca, it stated that he had been detained by an army patrol from the Carhuamayo Countersubversive base, where he was interrogated, and released the next day, June 7, 1992, and that, as evidence of this, a document was drawn up before by the justice of the peace, the governor, and the mayor of Carhuamayo, after an expert medical opinion certifying his state of health. Also, in order to show that the victim was not in custody, the State attached a copy of complaints lodged by Mery Quiquia Rivadeneyra and David Colqui Hinostroza, in different places (in Milpo-Ulcamayo on August 22, 1992 and Junín district on November 23 and 25, 1992, respectively), after his presumed disappearance, and added that he was involved with the terrorist group Shining Path, and was underground. Concerning Héctor Riveros Izarra, the State argued that on December 9, 1992, he had voluntarily turned himself in to the security forces, and that he is “recovered” and is completing his military service at Counter-subversive base N° 241 at Rímac. The State stressed that Edgar Chaguayo Quispe, Eugenio Curasma Sulla, María Sánchez Retamozo and Edwin Ramos Calderón had not been detained by the Peruvian armed forces. The State also said that given the modus operandi used, the murders of Augusto Galindo Peña, Juana Ñahui Vilcas, Miriam Lidia Navarro Concha, Alejandro Tunque Lizama, Socimo Curasma Sulla, Fernando Sáenz Munarriz, Gladys Espinoza León and Hugo Puente Vega were due to the settling of accounts between terrorist groups.

25. Camilo Nuñez Quispe and Teófilo Nuñez Quispe (Case 11.200)

Facts alleged

143. According to the petition submitted to the IACHR by the Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ), the facts alleged occurred from June 17, 1993 to August 21, 1993, in Huancán district, Huancayo province, Junín department, and were attributed to State agents belonging to the National Police. The petitioner reported that on June 17, 1993, a group of 10 armed men, some of them wearing police uniforms and ski masks, violently entered the home of Camilo Nuñez Quispe in the Porvenir neighborhood of Huancán district, province of Huancayo. They note that after identifying him, they beat him violently, and took him away in a National Police vehicle. His relatives state that the mayor of the Huancán District Council had threatened him on several occasions, telling him that “he was going to be disappeared” and Teófilo Nuñez Quispe repeatedly asserted that the mayor had disappeared his brother. The family reported these incidents to the Special Human Rights Prosecutor, and inquired into the whereabouts of the victim in Region VIII of the National Police, and filed a writ of habeas corpus that was declared inadmissible by the judge, based on the fact that the detainee was not to be found at any military base or police station in the area.

144. On August 21, 1993 at 11:00 p.m., four presumed police agents, two in uniform and two in civilian dress, with ski masks and armed, violently entered the home of Teófilo Nuñez Quispe, employee of the Peruvian Institute of Culture, and brother of Camilo Nuñez, looking for arms, and detaining Teófilo Nuñez. The corpse was found in the yard of his former home. He had been blindfolded, had wounds all over his body, and a gunshot wound to the head.

Processing before the Commission

145. On September 9, 1993, the Commission opened the case and forwarded the pertinent parts of the complaint to the State, and requested information on the facts alleged. The Peruvian state responded on November 22, 1993. On February 23, 1994, the petitioner sent observations on the State's response. Both parties presented additional information.

146. On April 25, 2000, the Commission asked the State and the petitioners to submit up-to-date information on this case within 45 days. In the same communication, the Commission made itself available to the parties to pursue a friendly settlement, in keeping with Article 48(1)(f) of the Convention. Once the term expired, there was not agreement between the parties to pursue a friendly settlement. Both parties responded.

The State's position

147. In its initial report, the State denied the participation of members of the Peruvian Police in the detention and disappearance of Camilo Nuñez Quispe and in the homicide of his brother, Teófilo Nuñez Quispe, adding that the Prosecutor's Office was investigating the latter incident, but had not been able to identify the perpetrators. Furthermore, the State said that Camilo Nuñez Quispe was a member of an "annihilation command" of the terrorist group Shining Path; and that although there was no evidence that members of the security forces had detained or disappeared him, one could presume that the Communist Party of Peru-Shining Path members had executed him, as well as his brother, Teófilo Nuñez Quispe. Lastly, the State argued that domestic remedies had not been exhausted since the petitioner presented the complaint only six days after the incident had occurred. In its report of June 9, 2000, the State added that the inquiries into the detention and disappearance of Camilo Nuñez and the homicide of Teófilo Nuñez were taken on by the Office of the Fourth Provincial Prosecutor of Huancayo, but since the perpetrators had not been identified, the investigation was provisionally archived. Accordingly, the State did not deem it advisable to pursue a friendly settlement.

III. COMBINING THE CASES

148. The Commission, mindful of the uniformity in the current state of processing in all of the cases, which makes it possible to resolve them together, the common characteristics of the facts alleged, and common time frame, and the fact that all of them have been attributed to State agents, decides to combine the foregoing cases and proceed to resolve them together, based on Article 40 of its Regulations.

IV. ADMISSIBILITY ANALYSIS

A. Competence of the Commission

149. The Commission is competent to examine the subject matter of this complaint, which refers to alleged violations of rights enshrined in Articles 1, 3, 4, 5, 7, 8, 19, and 25 of the American Convention. The petitioners have standing to appear, as provided in Article 44 of the Convention. The Peruvian State ratified that Convention on May 25, 1978, and it entered into force for all parties on July 18, 1978. The complaints in question refer to events after these dates.

B. Admissibility requirements of petitions

1. Exhaustion of domestic remedies

150. Article 46(2)(c) and 46(2)(a) of the American Convention provide, among the exceptions to the requirement of prior exhaustion of domestic remedies, that regarding unwarranted delay in rendering a final judgment, and that according to which “the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated.” In this respect, the IACHR observes that in all the cases under analysis, there was a common denominator: that after seven to 16 years had passed, in none of the proceedings has there been a final judgment punishing the persons responsible for the crimes denounced. For example, in 20 of the 25 complaints already mentioned, although the State had the duty to investigate and to process the corresponding cases, the proceedings are still at the investigative stage, with a ruling ordering provisional archiving, and the human rights violators have not been identified, accused, and punished; in three [FN3] of the 25 petitions, the persons allegedly responsible were identified, but the investigations are continuing, and only in case 11.065 did the proceeding conclude, but the Amnesty Law was applied so as to benefit the members of the Army. And in case 10.913, the decision was to dismiss criminal negligent homicide charges. This circumstance, in general, is itself sufficient to trigger the exceptions mentioned to the prior exhaustion of domestic remedies requirement set forth in Article 46(2)(c) and 46(2)(a) of the Convention.

[FN3] Cases 11.040, 11.179, and 11.292.

151. In addition, the Commission observes that, as the Inter-American Court of Human Rights has held on several occasions, several practical consequences arise from generally accepted principles of international law when the state invokes the prior exhaustion rule: first, the prior exhaustion rule is a requirement established for the benefit of the State; accordingly, the State may expressly or tacitly waive its option to invoke it; second, a timely admissibility objection on grounds of failure to exhaust domestic remedies must be made in the first stages of the procedure, or it is presumed that the State has tacitly waived it; and third, a State that invokes failure to exhaust domestic remedies must indicate what remedies are available to be exhausted, and make a showing of their effectiveness. [FN4]

[FN4] Inter-American Court of Human Rights, Case of Fairén Garbi and Solís Corrales, Merits, Judgment of March 15, 1989, Ser. C No. 6, para. 109. See also, Case of Viviana Gallardo et al., Judgment of November 13, 1981, No. 101/81, Ser. A, para. 26; Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 1, para. 88; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 6, para. 87; Case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, Ser. C No. 3, para. 90; Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Ser. C No. 12, para. 38; Neira Alegría et al., Preliminary Objections, Judgment of December 11, 1991, Ser. C No. 13, para. 30, among others.

152. Another aspect that should be kept in mind when analyzing the exhaustion of domestic remedies is the distinction that should be made between the moment of submitting a complaint and the decision on admissibility. These are two different phases, which are easily distinguished by the legal effects of Article 33 of the Regulations, which authorizes the Commission to ask the petitioner to complete the requirements omitted when the petition is incomplete or inadmissible. In other words, as the petitioner has the opportunity to cure the defects of the petition after the complaint is submitted, the requirement of prior exhaustion of domestic remedies must be met when the Commission analyzes that aspect. [FN5]

[FN5] The Commission previously ruled in this regard in Report No. 52/00, of June 13, 2000, Cases 11.830 and others, Peru, Doc. OEA/Ser.L/V/II.

153. On applying the foregoing principles to this case, the Commission observes that in eight of the 25 cases under study, the State did not invoke the objection of failure to exhaustion domestic remedies in its first answer to the IACHR, but only in the second, [FN6] third, [FN7] or fourth [FN8] communication. In another 12 cases, the State did not make an express argument alleging failure to exhaust domestic remedies. [FN9] In one other case, the State said that the complaint was without foundation because the act was attributable to common crime, [FN10] and in one other case the State reported that criminal proceedings had been instituted and identified members of the Army as presumably responsible, and went on to say that the judiciary had applied Amnesty Law N° 26,479 to the benefit of the defendants. [FN11] Accordingly, the Commission concludes that in these 22 cases the State tacitly waived the objection of failure to exhaust domestic remedies.

[FN6] Cases 11.132 and 11.179.

[FN7] Cases 10.431, 10.805, 11.057, 11.200, and 11,126.

[FN8] Case 11.035.

[FN9] Cases 10.523, 10.744, 10.878, 10.947, 10.994, 11.040, 11.064, 11.088, 11.161, 10.247, 10.472, and 11.292.

[FN10] Case 11.057.

[FN11] Case 11.065.

154. In view of the foregoing, the Commission considers that the admissibility requirement of prior exhaustion of domestic remedies has been met in the cases under study.

Time period for submission

155. According to Article 46(1)(b) of the Convention, the petitions must be submitted within six months from the date when the person whose rights have allegedly been violated has been notified of the final decision in the domestic jurisdiction. According to Article 46(2) of the

Convention, that rule does not apply when one of the exceptions to the prior exhaustion rule, referred to in that same article, is applicable. Having concluded that the exceptions referred to at Article 46(2)(c) and 46(2)(a) of the American Convention apply to the cases under study, the Commission concludes that the requirement regarding time period for submission does not apply.

156. Article 38 of the Commission's Regulations provides that the time period for submission "shall be a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." Accordingly, the Commission wishes to add that to date there has been no firm and final decision regarding who is responsible for the violations alleged in any of the cases under study, and, moreover, the 25 complaints were submitted promptly to the Commission, as follows: 16 petitions within a time period running from several days (six) to less than six months as of the date of the extrajudicial executions alleged [FN12] and of the illegal detention alleged; [FN13] in six other cases, the petitions were submitted after the sixth and up to the tenth month after the date on which the events occurred, [FN14] and in three cases, two, [FN15] five, [FN16] and seven years after the fact, but in last case cited within six months and four days from the date on which the provisional archiving of the inquiry was ordered. [FN17]

[FN12] Cases 10.878, 10.913, 10.947, 10.994, 11.051, 11.057, 11.064, 11.065, 11.088, 11.200, 10.247, 10.472, and 11.292.

[FN13] Cases 10.523, 11.040, and 11.132.

[FN14] Cases 10.564, 10.744, 10.805, 11.035, 11.161, and 11.179.

[FN15] Cases 11.126.

[FN16] Case 10.431.

[FN17] Case 11.680.

Duplication of procedures

157. The Commission understands that the subject matter of the petitions is not pending before any other international body for settlement nor has it been examined by this or any other international entity. Therefore, the requirements established in Articles 46(1)(a) and 47(d) are met.

Characterization of the facts

158. The Commission considers that the petitioners have stated facts which, if true, could characterize a violation of the rights guaranteed by the American Convention.

V. FRIENDLY SETTLEMENT

159. As set forth in the part on the processing of each of the 17 cases under analysis, the Commission, in keeping with Article 48(1)(f) of the Convention, placed itself at the disposal of the interested parties in order to pursue a friendly settlement based on respect for the human

rights recognized in the American Convention, but in none of the cases was it possible to initiate the process of pursuing friendly settlement.

VI. MERITS ANALYSIS

A. Initial considerations

160. In this chapter, the Commission will proceed to determine the possible participation of State agents in the systematic violation of certain human rights in Peru, from 1984 to 1993.

161. As documented in this report, during that period the overall context shows the systematic violation of the right to life, in the form of summary executions and forced disappearances at the hands of State agents or persons related to them. Of the 25 petitions, among others received, 15 refer to extrajudicial executions, six complaints allege the forced disappearance of persons, and four petitions allege the summary execution and forced disappearance of some victims; the merits analysis includes a study of those two situations, i.e. the systematic practice of arbitrary executions in conjunction with the systematic practice of forced disappearances.

B. Arbitrary executions in Peru

162. As stated above, the Commission decided to combine the 25 cases under study based on the consideration that the facts alleged suggest the existence of a systematic pattern of violations of the right to life in Peru. Some cases that are the subject of this report include several individuals in a single complaint, most of them subjected to extrajudicial executions (83 persons) by State agents or persons linked to them, and tolerated by the State, perpetrated from 1984 to 1993, in the context of what were called “anti-subversive” military operations, which were carried out with a similar *modus operandi*.

1. Extrajudicial execution as a practice

163. In this chapter, the Commission analyzes the possible existence of a systematic practice of extrajudicial, summary or arbitrary executions by agents of the Peruvian State, in tandem with the State practice of forced disappearance of persons [FN18] during the above-mentioned period (1984-1993). The study includes a brief outline of the historical framework, the analysis of the characteristics of that practice, the *modus operandi*, and a profile of the persons chosen as victims.

[FN18] The Commission analyzed the issue of the systematic practice of forced disappearances in Peru in Reports Nos. 11/99 and 55/99, on cases 10.815, 10.905, 10.981, 10.995, 11.042, and 11.136.

164. These arbitrary executions were often consummated during that period using procedures that display similar and identifiable characteristics, in specific geographic areas, which were under a state of emergency and where “anti-subversive” operations were under way by the State.

During the period covered in this report, political violence became entrenched throughout Peru. The worsening of the conflict deteriorated to the point of annulling the promotion and protection of human rights. Reports from this period reflect the fragility of the right to life, liberty, and personal integrity. Extensive geographic zones were declared to be in a state of emergency [FN19] and the conflict even reached into urban areas.

[FN19] According to the 1995 Informe sobre la situación de los Derechos Humanos en el Perú, by the Coordinadora Nacional de Derechos Humanos, in late 1995 “there were 46 provinces of 11 departments under a state of emergency: Apurímac (4), Ayacucho (4), Cusco (4), Huancavelica (3), Huánuco (4), Junín (3), Lima (3), Loreto (2), Pasco (1), San Martín (its 10 provinces), Ucayali (2), and the Constitutional Province of Callao,” all areas in which the civilian authorities had been subordinated to the political-military commands.

165. In its Report on the Situation of Human Rights in Peru, of March 12, 1993, [FN20] the Commission noted that for during the same period, it had “decided 16 cases of summary execution, involving 22 victims.” That same report stated that in the first year of the Fujimori government “individual and mass summary executions were still being conducted, such as those that occurred in Chilcahuaycco, Chumbivilcas, Iquicha and Santa Bárbara. These were incidents blamed on security forces, at times acting in concert with the so-called peasant gangs.” The State itself, in an official communication of September 18, 1990, [FN21] indicated that government agents carrying out the struggle against the guerrillas had committed excesses and abuses, although it was not a systematic practice of human rights violations. The Presidential Directive on human rights dated September 13, 1991 [FN22] noted that “only the definitive elimination of injustice and marginality can finish off the subversives,” and at Section III of that Presidential Directive, the State officially recognized the phenomenon of extrajudicial executions, stating: “The results are not yet as encouraging as we would like, for there need only be one person disappeared, one person killed, to call the situation dramatic and horrifying. Nonetheless, the numbers are diminishing notably, and what is most important, we have the firmest aim of achieving a situation in our country in which there is not a single person disappeared, and in which torture and extrajudicial execution are eliminated for good.”

[FN20] Document OEA/Ser.L/C/II.83, doc. 31 (1993).

[FN21] Cited in IACHR, Report on the Situation of Human Rights in Peru, 1993, para. 27.

[FN22] Cited in IACHR, Report on the Situation of Human Rights in Peru, 1993, paras. 31 ff.

166. The Inter-American Commission, in the above-noted 1993 Report on the Situation of Human Rights in Peru, at paragraph 39, noted the publication, on July 14, 1991, through a political program, of “the alleged existence of a directive for execution of antisubversive operations, which contained principles contrary to the observance of human rights, such as condoning the use of torture and summary executions.” Even though the Joint Command of the Armed forces issued a communiqué stating “the document is not consistent with either the philosophy or the spirit of the directives of the Joint Command, so that investigations have been

ordered to ascertain those responsible,” as of the date of publication of that report, the results had not been disclosed. In contrast, the political program in which the publication was produced ceased broadcasting due to a conflict between the director of the program and the directors of the TV channel.

167. Due to the rupture of the democratic institutional order in Peru on April 5, 1992, the closing down and occupation of the Congress and the Supreme Court, the persecution and arrest of opposition political leaders and one journalist, who remained detained, with no knowledge as to their whereabouts, and the occupation of the “Miguel Castro Castro” Penitentiary which led to grave human rights violations in Peru, the Permanent Council of the Organization of American States convened an ad-hoc meeting of Ministers of Foreign Relations, which was held April 13, 1992, in Washington, which resolved “to appeal for the immediate reestablishment of democratic institutional order in Peru, for an end to all actions that impair the observance of human rights, and for abstention from the adoption of any new measures that will further aggravate the situation.” It also resolved to “voice profound concern over the present status of rights and liberties in Peru...” [FN23]

[FN23] Id., at para. 43.

168. At the same time, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, who visited Peru in 1993, in paragraph 26 of his report verified the decline in the number of complaints alleging arbitrary executions, as it was found that in the first six months of 1992 there were 74 complaints, and during the same period for 1993 there were 19. Yet he also noted that by September 1993 there were 35 extrajudicial executions. [FN24] The above-mentioned special rapporteur, in UN document E/CN.4/1995/61, of December 14, 1994, paragraph 250, stated:

[FN24] UN Document E/CN.4/Sub.2/1994/51, p. 4.

The reports and allegations received by the Special Rapporteur during 1994 indicate that violations of the right to life continue to occur in Peru. As in former years, such reports refer to killings due to abuse of force by law enforcement personnel and members of the rondas campesinas, peasant self-defence groups cooperating with the security forces. In a large number of these cases, the victims are peasants suspected of being members or sympathizers of the armed insurgency. Particularly disturbing reports in this regard were received concerning the Huallaga valley in the Peruvian selva, where military counter-insurgency operations were said to have caused the death of more than 60 civilians, some of them allegedly after torture, in early 1994.

169. The same special rapporteur, in UN document E/CN.4/1994/7/Add.2, paragraph 54, on the existence of death squads, stated:

The Special Rapporteur has received reports concerning active involvement of high-level military officers in the planning and carrying out of extrajudicial killings. A “death squad” composed of members of the Division of Special Forces of the Army is said to operate under the command of a member of the National Intelligence Service, with the full knowledge and acquiescence of the President of the Armed Forces Joint Command. The cases whose planning and execution have been imputed to this death squad include the massacre at Barrios Altos (see above, para. 34(e)) and the abduction and alleged execution of nine students and a professor of La Cantuta university (see below, paras. 55-73). During the Ibero-American Summit at Bahia, Brazil, in July 1993, President Fujimori tacitly conceded to journalists that the death squad exists. Like most complaints about human rights abuses and, in particular, violations of the right to life, these grave allegations have not been the subject of thorough investigations by an independent and impartial body.

170. These documents lead the Commission to conclude that in the period from 1984 to 1993, there was a systematic practice of extrajudicial executions, perpetrated by agents of the Peruvian State and persons linked to it who acted in coordination with the counterinsurgency struggle in their functions and aims.

171. After the foregoing analysis, the Commission concludes that the facts alleged in the 19 petitions are part of the State’s systematic practice of extrajudicial executions, consummated by members of the Peruvian security forces and the anti-subversive rondas civiles campesinas, or peasant civil defense patrols, linked to the State, in practices tolerated by the State, in the context of absolute impunity, which was reaffirmed by the Peruvian State upon issuance of the Amnesty Laws.

C. Forced disappearance of persons in Peru

172. During the period in question (1984-1993), the forced disappearance of persons was also a widespread practice. The 25 petitions, among others, that are under analysis, refer to violations of the right to life of more than one victim, and in four of those 25 petitions, concurrently, there were allegations, not only of the summary execution of 83 victims, but also of the disappearance of 36 Peruvian citizens. Six of the 25 petitions combined refer exclusively to the forced disappearance of 32 persons, and two of the cases analyzed include four disappearances in conjunction with summary executions, as part of a systematic pattern of violations of the right to life, perpetrated by state agents or persons linked to the state, and tolerated by the State, within the context noted of “anti-subversive” military operations, and with a similar modus operandi.

1. The forced disappearance of persons as a practice

173. Next, the Commission proceeds to determine the possible participation of State agents in violations of the right to life, humane treatment, and liberty in Peru in the form of forced disappearance of persons during the period in question. [FN25]

[FN25] The Commission analyzed the question of the systematic practice of forced disappearance of persons in Peru in reports 11/99 and 55/99, on cases 10.815, 10.905, 10.981, 10.995, 11.042, and 11.136. Annual Report IACHR, 1999.

174. Through the systematic practice of forced disappearance of persons, Peruvian state agents or persons linked to them or who acted subordinated to them sought to repress the activities of the insurgent groups that opposed the government and to control the population as a whole from 1984 to 1993. Forced disappearances of persons were perpetrated by the use of procedures that display similar and identifiable characteristics, in specific geographic areas that were under a state of emergency and in the course of counter-insurgency operations by the State.

175. In the same 1993 Report on the Situation of Human Rights in Peru, the Commission addressed the problem of the forced disappearance of persons and mentioned that as of that date, the Commission had adopted 43 resolutions in relation to individual cases with 106 victims in all. In addition, the State officially admitted having received 5,000 complaints in cases of forced disappearance from 1983 to 1991. [FN26] For her part, the Special Human Rights Prosecutor recorded 802 complaints concerning persons disappeared in 1992, 138 in 1993, 120 in 1994, and 8 in 1995. Further, the United Nations Working Group on Enforced or Involuntary Disappearances received 3,004 cases from 1983 to 1992, and 20 in 1993. [FN27] In the report, classified as UN Document E/CN.4/1998/43, of January 12, 1998, that working group expressly stated:

[FN26] Presidential Directive on Human Rights, September 9, 1991. Cited in IACHR, Report on the Situation of Human Rights in Peru, 1993, para. 17.

[FN27] Coordinadora Nacional sobre Derechos Humanos, Informe sobre la Situación de los Derechos Humanos en el Perú, 1995.

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 Sendero Luminoso (Shining Path). In late 1982, the armed forces and police undertook a counter-insurgency campaign and the armed forces were granted a great deal of latitude in fighting Sendero Luminoso and in restoring public order. While the majority of reported disappearances took place in areas of the country which had been under a state of emergency and were under military control, in particular in the 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 the Civil Defence Groups. Some 20 other cases reportedly occurred in 1993 in the Department of Ucayali and concerned largely the disappearance of peasants.

176. The Coordinadora Nacional de Derechos Humanos of Peru, recognized as a non-governmental organization that serves as an umbrella group for several Peruvian human rights organizations, based on statistics from the U.N. Working Group on Enforced or Involuntary Disappearances, concluded that from 1983 to 1992, Peru was the leading or the second-leading

country worldwide for the number of persons detained and disappeared, [FN28] and it found that from 1990 to 1992, 725 persons disappeared in Peru. [FN29] It also added that in 1992, the national human rights groups received 286 complaints; of these 178 victims are still detained and disappeared. According to the records of the Public Ministry, the zones most affected by this practice were Huánuco (120 victims), Junín (86 victims), Ayacucho (76 victims), and San Martín (52 victims), and in almost 90% of the cases responsibility was attributable to the armed forces. [FN30]

[FN28] Informe sobre la Situación de los Derechos Humanos en el Perú en 1992.

[FN29] Coordinadora Nacional sobre Derechos Humanos, Informe sobre la Situación de los Derechos Humanos en el Perú en 1992, p. 64.

[FN30] Id., p. 11.

177. The ad hoc provincial prosecutor for the department of Junín, Ms. Imelda Tumialán, declared that in 1991 there were more than 100 disappearances in the department of Junín, [FN31] and the deputy attorney general of Peru, in a note of January 9, 1992, stated that in the first 11 months of 1991, there were 268 allegations of forced disappearance, very few of which could be clarified.

[FN31] Instituto de Defensa Legal: "Perú Hoy, en el Oscuro Sendero de la Guerra," 1991, p. 150.

178. The Commission deems it pertinent to recapitulate the following considerations on the phenomenon of forced disappearances in Peru that it offered when it decided together, not long ago, a group of 35 cases that involved 67 persons disappeared in different departments of Peru from 1989 to 1993. In this respect, the Commission expressed itself in the following terms, which it now reiterates in full:

[T]he 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.

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." 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.

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, which empower the Commission to weigh the evidence freely and to determine the amount of proof necessary to support the judgment.

The modus operandi used, according to the petitions received by the Commission, in the arrests and disappearances in the cases in question, involving Messrs. ... shows an overall pattern of behavior that can be considered admissible evidence of a systematic practice of disappearances.

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. Subsequently, the Commission has continued to write reports on the matter. 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. 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.

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 late 1982, 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. [Report of the Working Group on Enforced or Involuntary Disappearances, UN Document E/CN.4/1998/43, January 12, 1998, para. 297) .]

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. 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 non-governmental umbrella group of various Peruvian human rights organizations, estimates that 725 persons disappeared in Peru between 1990 and 1992. 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.

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

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

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.

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.

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.

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.

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

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.

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

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

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 N° 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 N° 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.

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 N° 26.657 did not apply to President Alberto Fujimori.

(...)

Considerations relating to forced disappearances

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. 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 as a means of preventing and punishing the forced disappearance of persons in our Hemisphere.

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.

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. [FN32]

[FN32] IACHR, Report N° 51/99, Cases 10,471 and others (Peru), Annual Report 1998, paragraphs 68 to 95. See along the same lines IACHR, Reports Nos. 52/99, 53/99, 54/99, 55/99, 56/99, and 57/99 (Peru), Annual Report 1998.

179. The documents that support the foregoing historical account and the facts analyzed in each of the cases in this report lead the Commission to reiterate that from 1984 to 1993, there was a systematic practice of extrajudicial executions and forced disappearance of persons in Peru, carried out by agents of the Peruvian State and tolerated by the Peruvian authorities. This official practice was part of the counter-insurgency military operations that affected persons including students, teachers, trade union leaders, and opposition political party leaders, and peasants, who in most cases had no relationship with the dissident groups.

D. Facts established

1. Weighing the evidence

180. With a view to determining whether the facts in the cases in question are part of the State policy of violating human rights, which included and tolerated summary executions and the forced disappearance of persons, and, therefore, to show the real occurrence of that practice, it is important that the Commission point out the criteria that govern the weighing of evidence, and also the burden of proof issues.

181. In principle, the Commission will apply the legal principle provided for in Article 42 of its Regulations, which states:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

182. Second, as neither the Convention nor the Commission's Regulations regulate in detail aspects relating to the criteria for weighing evidence, the Commission, following the international case-law and its own practice, shall apply the system of free weighing of the evidence, which gives it a measure of flexibility as regards determining the amount of evidence needed to support the judgment. [FN33]

[FN33] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, para. 127.

183. In addition to direct testimonial, expert, and documentary evidence, one must consider the words of the Inter-American Court when it stated that “[c]ircumstantial evidence, indicia, and presumptions may be considered,” [FN34] in particular when a governmental practice of human rights violations has been shown.

[FN34] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Merits, *supra*, paras. 127-30; Case of Godínez Cruz, Merits, Judgment of January 20, 1989, Ser. C N° 5, paras. 133-36; Case of Fairén Garbi and Solís Corrales, Merits, Judgment of March 15, 1989, Ser. C N° 6, paras. 130-33; Case of Gangaram Panday, Merits, Judgment of January 21, 1994, para. 49.

184. As regards the burden of proof, based on the general principle according to which in proceedings over human rights violations, when there are sufficient indicia to determine that the detention or systematic practice of the human rights violation is carried out by state agents, the Commission presumes that the victims were executed or disappeared by acts of Peruvian state agents. [FN35] Then, as it is the State that controls the means of evidence for clarifying the facts that occurred in its territory, it has the obligation to present them, which is why its defense cannot be based on omission by the petitioner, who also requires the State’s cooperation in order to marshal the necessary evidence. [FN36] The Commission has stated, of the burden of proof, that it

[FN35] Inter-American Court of Human Rights, Velásquez Rodríguez, paras. 124 ff.
[FN36] *Id.*, para. 135.

lies with the State, because when the State holds a person in detention and under its exclusive control, the State 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. [FN37]

[FN37] IACHR, Report N° 3/98, Case 11.221 (Colombia), Annual Report 1997, para. 62.

185. This brief synthesis of the international criteria that govern the weighing of evidence and the shifting of the burden of proof in cases of human rights violations, in the case of systematic practices of summary executions or detentions, whose final result is the summary execution and forced disappearance of persons, illustrates the effects of shifting the burden of proof and the active, elusive, or omissive conduct of the Peruvian State in the cases under study.

2. Facts presented and their relationship to the practice of extrajudicial executions and the forced disappearance of persons

186. As was noted, from 1984 to 1993 hundreds of persons were summarily executed or disappeared in Peru. The cases reported reflect a systematic practice by State agents, with similar operational patterns. That modus operandi was common in the consummation of violations of the right to life: some executions and disappearances were consummated indiscriminately, without taking account of sex or age, and family groups were affected. These arbitrary executions and disappearances were also selective: the victim or group was identified and chosen for their political affiliation, activity, or occupation, or presumed or real link with members of the dissident Peruvian groups Shining Path or Movimiento Revolucionario Túpac Amaru, and the victims were executed or detained, later to be executed or disappeared, even though witnesses were present, using, in most cases, firearms, and in which no person or judicial authority did anything to impede these incidents. Most of the investigations ended without results, and in those in which members of the armed forces of Peru were identified as perpetrators, they were benefitted by the Amnesty laws or judgments ceasing the proceedings.

187. In the 25 cases under study, the petitioners have presented lists of 120 victims, including men, women, and children, 84 of whom died violently, and 36 of whom continue disappeared.

188. Due to the lack of more active participation by the Peruvian State, and by virtue of the principle that silence on the part of the respondent, or respondent's elusive or ambiguous response, can be interpreted as acceptance of the facts stated in the complaint, or of its omission, on not providing any evidence to show that the state agents were not responsible for the extrajudicial executions, detentions, and cases of torture, in those cases in which they occur concurrently, the Commission concludes that human rights violations were perpetrated by the State, through its agents, in cases 10.247, 10.431, 10.472, 10.523, 10.564, 10.805, 10.878, 10.913, 10.947, 10.994, 11.035, 11.051, 11.057, 11.065, 11.088, 11.161, 11.292, 11.680, 11.126, 11.132, 11.064, and 11.200, or by persons linked to the State in cases 10.744, 11.040, and 11.179.

189. According to the facts alleged and proven in the cases that are the subject of this report, the circumstantial evidence and the circumstances of manner, time, and place in which the facts were perpetrated evidence a common pattern in the modus operandi deployed by the members of the Peruvian Army and persons linked to it, in each of the four basic practices used at that time, in violation of the right to life, whose joint analysis offers circumstantial evidence of intent. Those four patterns of conduct corresponded to use of so-called "law of flight" ("ley de fuga"), i.e. claiming persons are killed while trying to flee, the modus operandi deployed in the urban and rural areas by members of the security forces of the Peruvian State, and the forced disappearance of persons perpetrated by the anti-subversive civil defense committees.

190. In this context, in the Commission's view, in four cases, numbers 10.913, 10.994, 11.065, and 11.680, the first involving summary execution and the last three involving arbitrary detention, torture, and extrajudicial executions, the crimes were perpetrated in keeping with one of the three basic practices that prevailed at the time, killing persons allegedly when they are trying to escape.

191. In these four cases, all the victims resided in rural areas, and in areas under state of emergency, where counter-insurgency military operations were being deployed; in addition, each of them had previously been linked in one way or another with belligerent groups. In terms of the modality used in the detention, only in case 10.913 were the four victims detained in flagrante delicto, given the confusing circumstances in which the detention occurred, [FN38] i.e. after a confrontation between community members and four belligerents, who the community members were accompanying against their will. In case 11.860, [FN39] the patrol captured the victim at a check-point, and in two other cases, [FN40] the Army patrol captured the victims in their respective homes, and then took them to the military units, where they subjected them to torture and finally executed them, shooting them from behind. Without exception, all the victims had previously been brought under the control and were under the custody of the authorities, defenseless and unarmed; many had been tortured, and all received gunshot wounds, fired with precision, generally from behind, and concentrated in vital parts. In the first three cases, the soldiers explained that the detainees tried to escape, and in the last, that he had died in combat when showing the patrol the places where they hid their weapons. Nonetheless, the corpse of Ricardo Salazar Ruiz had three gunshot wounds in the back and one in each leg, allowing one to infer, without much effort, an arbitrary execution.

[FN38] Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani.

[FN39] Moisés Carvajal Quispe.

[FN40] Teodoro Alvarado Castillo (10.994) and Ricardo Salazar Ruiz (11.065).

192. The second pattern of conduct in the modus operandi used by the State agents or persons linked to it, in the systematic practice of summary executions (10.878, 10.947, 10.994, 11.035, 11.051, 11.057, 11.065, 11.088, 11.161, and 11.680), the forced disappearance of persons (10.564, 11.126, 11.132), and in the cases in which these two forms of violation of the right to life concurred simultaneously (10.431, 10.523, 11.064, and 11.200) is that they all occurred in the rural areas of Peru under strict control of the Peruvian security forces. In these cases, it was found that there were arbitrary detentions, torture, and extrajudicial executions or the forced disappearance of persons.

193. First, the executions, and, in those cases where it occurred, the forced disappearances, followed a similar practice. They were perpetrated systematically, selecting the victims based on their political activities, including students, teachers, trade union leaders, and, based on their criminal records, persons previously detained on charges of terrorism, and in areas where there had been combat or attacks by terrorist groups, as well as retaliatory acts.

194. Second, in terms of the characteristics of the perpetrators of the human rights violations, in all of the cases a several heavily armed persons committed the unlawful acts. In most of the cases they used military uniforms or were in civilian dress and used ski caps to cover their faces. In addition, in all the cases, it was known that they were perpetrated by members of the security forces or in joint actions with what were called the rondas civiles, which acted in their name or

with their consent. In addition, the judicial remedies that existed were ineffective for guaranteeing the right to life and related fundamental rights such as the right to privacy, liberty, and humane treatment.

195. With respect to the modality used in the detention or execution, in only one case was the victim detained in flagrante delicto: [FN41] the arrest of Edith Galván, which occurred based on the accusation by a taxi driver who reported that a woman and two young men were the persons who tried to rob his car. In five of these 15 cases, the persons responsible went to where the victims were; in one of those cases they executed three of the victims immediately and detained another, whose whereabouts remain unknown. [FN42] In four of these seven cases, [FN43] the persons responsible for the executions went to where the victims were and executed them on the spot. In eight of the 17 cases, [FN44] the modus operandi used was initially capturing the victim, then taking him or her to an unknown place or to military or police units. Days later, the corpse would be found in some place in the area where the victim was captured or from the military base where he or she was presumably detained, or the victims simply disappeared.

[FN41] Edith Galván Montero (11.132).

[FN42] Case 10.523.

[FN43] Cases 10.878, 10.947, 11.088, and 11.161.

[FN44] Cases 10.431, 10.564, 11.035, 11.051, 11.057, 11.064, 11,126, and 11.200.

196. Finally, another common characteristic was the veil of impunity covering the human rights violators, as existing judicial remedies were ineffective for guaranteeing the right to life and the related fundamental rights, such as the right to liberty and humane treatment. For example, in four of these cases, the victim's families filed writs of habeas corpus, but to no avail, and in all the cases, the facts were reported to the domestic judicial authorities, but no investigation has concluded, and the persons responsible continue to benefit from impunity. Finally, the official denial of the detentions was the common denominator that hindered efforts to find the victims who were detained and disappeared or detained and executed alive. Despite the notoriety of the detentions, in those cases in which the families knew, from the outset, the initial place of detention or the barracks to which they were taken, the respective authorities denied it. That indicator, as previously established by the Commission, gives meaning to the practice and the reason for keeping it clandestine:

The fact that the authorities deny the detention, thus, merely confirms the clandestine nature of the military operations. The detention is not recorded or officially acknowledged, so as to make it possible to use torture during interrogation and, eventually, extrajudicial punishments imposed on persons considered sympathizers, collaborators, or members of the armed dissident groups.

197. The third modus operandi displayed in the systematic practice of summary executions took place in the urban areas of the Peruvian State (Cases 10.247, 10.472, 10.805, and 11.292). The modus operandi of the persons responsible for the extrajudicial executions was characterized, as in the previous cases, by the selection of the victims based on possible ties with

one of the subversive groups, or regular occupation, and their execution after being detained. In some cases, the bodies showed signs of torture prior to execution.

198. In three cases, individuals identified as members of the police perpetrated the unlawful acts. The persons responsible for the extrajudicial executions went to the place where the victim was found, even when the victim was accompanied by other persons, detained them, and once they had been tortured they were executed. [FN45] In case 10.472, when the injured person, the brother of a person accused of being a member of a subversive group, went to the military base to obtain a document related to his military service, whereupon he was detained, tortured, and executed.

[FN45] With firearms in cases 10.805 and 11.292, and as a result of torture (asphyxia due to submersion), although the autopsy described the presence of a gunshot wound in the skull (Case 10.247).

199. The fourth pattern of conduct in the modus operandi deployed in the systematic practice of forced disappearances took place in the rural areas, specifically in the departments of Ayacucho and Junín, which were also under the strict control of the security forces of the Peruvian State, and of the so-called rondas civiles antisubversivas or civil defense committees, which were under the Political-Military Command; these are cases 10.744, 11.040, and 11.179.

200. The forced disappearance of persons consummated by the civil defense committees followed a similar practice: the disappearances were systematic and selective; the victims were students, community members, and persons suspected of belonging to terrorist groups. In the three cases it was known that they were perpetrated by ronderos linked to the security forces, who acted on their behalf and with their acquiescence.

201. Clear evidence of the joint work by the members of these civil defense committees and the armed forces of Peru in the counter-insurgency campaign is case 11.179, [FN46] in which the alleged victims were held by members of the Army and members of the civil defense committee of the Base at Rangra-Concepción, directed by Julio Cantorín Clemente, and two of them, Esteban Pallango Arango and Teófilo Romero León, reappeared at the military installation known as “Cuartel 9 de Diciembre” at Huancayo, as deserters who had been reinserted. At this point it should be clarified that based on the sequence of annexes provided by the petitioner, the deserters who had been “recovered” were really “Esteban Pallango Arango and Reynaldo Fidel Véliz” (Act of Inspection) and the possible confusion with respect to Teófilo Romero León arises from the fact that in the same document petitioner refers to, a third minor is mentioned, Teófilo Romero León. Nonetheless, the petition does not denounce his disappearance, but that of a minor who they initially identified as Rubén Romero León, whose real name, according to an explanation by the petitioner, is Esteban Romero León. So, for the Commission the deserters who were “recovered” are Esteban Pallango Arango and Reinaldo Fidel Véliz, and Esteban (or Ruben) Romero León is still disappeared.

[FN46] In which the petitioner clarifies that Esteban Pallango Arango and Teófilo Romero León are doing their military service at the “Cuartel 9 de diciembre” of Huancayo in their capacity as “recovered” deserters.

202. Another item of evidence that reaffirms the State’s responsibility for the actions of the rondas campesinas in the struggle against the dissident groups is the legal framework that authorized their creation and authorized the peasants to bear arms and carry out security tasks generally performed by the forces of order, under the direct coordination of the Political-Military Command. For this purpose, an infrastructure and functional distribution were put in place, similar to that of the military bodies to which they answered, as illustrated by the reports provided by the State, the first in case 11.040, in which the State indicated that the civil defense committees were created by Law 24,571 of November 6, 1986, and in the second, case 10.744, when it explained that “the Chief of the Los Cabitos 51 Counter-insurgency Base reported that the Self-Defense Committees of the jurisdiction of Huanta are under the supervision of that unit, including its files of ‘Daily communications and reports,’” and finally the version of Inés Castro, the wife of rondero Julio Cantorín, cited by the petitioner, in which she said “that her husband had an ID card issued by the President of the rondas campesinas of the Multisectoral Base at Huahuanca”; and finally, the objective and purpose undergirding their legal creation was precisely the counter-insurgency struggle.

203. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated as follows with respect to the joint work of the Peruvian Armed forces and the so-called rondas campesinas:

The reports and allegations received by the Special Rapporteur during 1994 indicate that violations of the right to life continue to occur in Peru. As in former years, such reports refer to killings due to abuse of force by law enforcement personnel and members of the rondas campesinas, peasant self-defence groups cooperating with the security forces. In a large number of these cases, the victims are peasants suspected of being members or sympathizers of the armed insurgency. [FN47]

[FN47] Doc. E/CN.4/1995/61, para. 250.

204. Based on the foregoing analysis, the Commission concludes that the State legally created the rondas civiles, supplied them with weaponry, subordinated them operationally and functionally to the respective Political-Military Command, and these self-defense groups performed joint and coordinated tasks with the military forces in fighting the dissident groups. Accordingly, they acted with the consent and license of the State, as agents linked to the State, and its practices, violative of human rights, were permitted and tolerated by the Peruvian State.

205. Previously, the Commission addressed the subject of the armed civil self-defense organizations, provided for by law, and which cooperate with the security forces of a state, when it analyzed the human rights situation in Colombia. In this respect, the IACHR analyzed the

consequences of the participation of the Cooperativas de Vigilancia y Seguridad Privada, known as CONVIVIR, for the violence and armed conflict in Colombia, and stated:

In any case, the Commission has verified that in certain areas of the country the CONVIVIR participate both in intelligence and counterinsurgency operations for the Armed forces and that, as already explained in this Chapter of the Report, they have occasionally been involved in acts of violence. These elements demonstrate that, in practical terms, the nature of the activities carried out by the CONVIVIR operating in the areas of conflict place their members in a role that can be identified with that of State agents in terms of the international responsibility of the State. [FN48]

[FN48] Document No. 9, OEA/Ser.L/V/II.102. Third Report on the Human Rights Situation in Colombia, Chapter IV, Violence and Violations of International Human Rights Law and International Humanitarian Law, 1999, para. 338.

206. The Commission, in the same report, section six, recommended to the Colombian State that it dismantle the services of the Cooperativas de Vigilancia y Seguridad Privada, or CONVIVIR, which it reiterated in the 1999 Annual Report of the Inter-American Commission on Human Rights.

207. After the foregoing analysis, the Commission finds that the relevant facts mentioned, alleged in the 25 petitions, are true with respect to the extrajudicial execution and forced disappearance, committed by agents of the Peruvian State, of the following 119 persons: Luis Miguel Pasache Vidal (Case 10.247); Walter Wilfredo Valer Munaylla (Case 10.472); Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805); Javier Alberto Ipanaque Marcelo, Guillermo Salinas Conde, Fidel Romero Conde, Uriol Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay (Case 10.878); Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani (Case 10.913); Guillermo Marín Arenas, Gerardo Chaico, Cirila de Chaico and her five-year-old son, the sister of Cirila de Chaico and her two-year-old son, and six unidentified persons (Case 10.947); Teodoro Lorenzo Alvarado Castillo (Case 10.994); Raúl Antero Cajacuri Roca (Case 11.035); Adrián Medina Puma (Case 11.051); Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057); Ricardo Salazar Ruiz (Case 11.065); Amadeo Inca Ñaupá (or Amadeo Arcanaupa), Luciano Huamán García, Antonio Janampa Aucassi, Constantina García Gutiérrez, Marciano (or Mariano) Janampa García, Agripina Aucassi Espilico, Maura Huamán Paucar, Demetrio Huamán León, Víctor Rojas Huamán (or Víctor Huamán Paucar), Mauro Huamán Paucar, Narciso Huamán Paucar, and Melecio Chonta Huamán (Case 11.088); Pascual Chipana Huauya, Pelagia Chipana Condori, Paulina Vásquez Esquivel, Donato Pablo, Juan Cacñahuaray, Jovita Cahuana, Pelayo Capizo, and Pelagia Pillaca (Case 11.161); Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292); Moisés Carvajal Quispe (Case 11.680); Luis Alberto Sangama Panaifo and Lucio Escobal Fretel (Case 10.564), Arturo Torres Quispe (Case 10.744); Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio

Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuasi Salomé, and César Sánchez Castro (Case 11.040); Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Vílchez Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126); Edith Galván Montero (Case 11.132); Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179); Víctor Tineo Sandoval, Guillermina Quispe de Tineo, Eulogio Demetrio Bohorquez Tineo, Ivan Roberto Tineo Rodríguez, and Elías Bohorquez Tineo (Case 10.431); Concepción Ccacya Barrientos, Maximiliana Sotaya, Donato Morán, Emiliana Puga, and Fortunato Venegas (Case 10.523); Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064); and Camilo Nuñez Quispe and Teófilo Nuñez Quispe (Case 11.200). These extrajudicial executions and forced disappearances were part of State policy, a systematic policy of extrajudicial executions and forced disappearances perpetrated by State agents or persons linked to the State, and tolerated by the State, in a context of absolute impunity, protected by the State, in both deed and law, with the issuance and enforcement of the Amnesty Laws.

E. Considerations of law

The right to life

208. Article 4(1) of the American Convention on Human Rights declares: “Every person has the right to have his life respected.... No one shall be arbitrarily deprived of his life.” The protection of the right to life has a dual connotation: first, no one may be arbitrarily deprived of his or her life, and second, Article 1(1) of the Convention requires that the State adopt the necessary measures to guarantee to all persons subject to its jurisdiction the inviolability of the right to life and the right to not be deprived of one’s life arbitrarily.

209. Article I of the American Declaration of the Rights and Duties of Man and Article 3 of the Universal Declaration of Human Rights establish: “Every human being has the right to life, liberty and the security of his person.” In Peru, the 1979 Constitution guaranteed the right to life, and the 1993 Constitution also enshrined it. Article 2 of the 1993 Constitution reads: “Every person has the right: (1) To life, identity, moral, mental, and physical integrity, and to free development and well-being. Every person is a subject of law in all respects that favor him or her from the moment of conception.”

210. Furthermore, common Article 3 of the Geneva Conventions establishes minimal standards, as customary international law, which apply automatically to all groups involved in an internal armed conflict. Common Article 3, section 1, reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

- (a) Violence to life and person. in particular murder of all kinds, mutilation, cruel treatment and torture; ...
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

211. So, both the State and the parties in conflict automatically assume the legal obligations set forth in common Article 3, which guarantees respect and humane treatment for persons who do not participate or who no longer participate in the hostilities.

212. Notwithstanding this legal framework, in the 25 cases that are the subject of this report, the Commission finds that the Peruvian State, through its agents and persons linked to it, acted in breach of the right to life in two ways: through summary executions and through the forced disappearance of persons.

213. In case 11.064, with respect to the victim Flaviano Sáens Chuquivilca, detained and disappeared on June 6, 1992, there are sufficient grounds to conclude that he was detained illegally and arbitrarily by members of the Army, for even though the authorities certified his release, his sister's assertion about his disappearance, and the statement by Percy Jaramillo Sáenz, the victim's cousin who saw him alive at the same military unit where they were detained, allow one to infer presumptively his death, [FN49] as eight years have elapsed since his detention and subsequent disappearance. Similarly, bearing in mind that more than seven years have elapsed since the detentions of Camilo Núñez Quispe (11.200), Miguel Angel Cieza Galván and Augusto Galindo Peña (11.064) and that between 8 and 16 years have passed since the detention and disappearance of the Peruvian nationals Concepción Ccacya Barrientos (case 10.523), Ivan Roberto Tineo Rodríguez, and Elías Bohórquez Tineo (Case 10.431), Luis Alberto Sangama Panaifo and Lucio Escobal Fretel (Case 10.564), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali

Salomé, and César Sánchez (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179), the Commission presumptively infers the death of these 36 victims.

[FN49] The Inter-American Court of Human Rights, in the Velásquez Rodríguez case, paragraph 156, established that the fact that a person remains disappeared for more than seven years is sufficient grounds for concluding that the person was deprived of his or her life; in addition, forced disappearance implies the execution of the persons detained, in secret and without any trial, followed by the act of hiding the corpse.

214. The facts alleged also demonstrate that the State failed to protect 84 victims from the summary executions performed by its agents, some on the spot, without any prior arrest, as in the case of Luis Miguel Pasache Vidal (Case 10.247), Walter Wilfredo Valer Munaylla (Case 10.472), Maximiliana Sotaya, Donato Morán, Emiliana Puga, and Fortunato Venegas (Case 10.523), Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805), Javier Alberto Ipanaque Marcelo, Guillermo Salinas Conde, Fidel Romero Conde, Uriol Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay (Case 10.878), Guillermo Marín Arenas, Gerardo Chaico, Cirila de Chaico and her five-year-old son, the sister of Cirila de Chaico and her two-year-old son, and six unidentified persons (Case 10.947), Héctor Riveros Izarra, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064), Ricardo Salazar Ruiz (Case 11.065), Amadeo Inca Ñaupá (or Amadeo Arcanaupa), Luciano Huamán García, Antonio Janampa Aucassi, Constantina García Gutiérrez, Marciano (or Mariano) Janampa García, Agripina Aucassi Espilico, Maura Huamán Paucar, Demetrio Huamán León, Víctor Rojas Huamán (or Víctor Huamán Paucar), Mauro Huamán Paucar, Narciso Huamán Paucar, and Melecio Chonta Huamán (Case 11.088), Pascual Chipana Huauya, Pelagia Chipana Condori, Paulina Vásquez Esquivel, Donato Pablo, Juan Cacñahuaray, Jovita Cahuana, Pelayo Capizo, and Pelagia Pillaca (Case 11.161), and others hours or days after their arrest, as in the case of Víctor Tineo Sandoval, Guillermina Quispe de Tineo, and Eulogio Demetrio Bohorquez Tineo (Case 10.431), Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani (Case 10.913), Teodoro Lorenzo Alvarado Castillo (Case 10.994), Raúl Antero Cajacuri Roca (Case 11.035), Adrián Medina Puma (Case 11.051), Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057), Ricardo Salazar Ruiz (Case 11.065), Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292), Camilo Nuñez Quispe and Teófilo Nuñez Quispe (Case 11.200), and Moisés Carvajal Quispe (Case 11.680).

215. The Commission concludes, based on the facts alleged and established in these cases, that agents of the Peruvian State deprived the above-named persons of their lives, and that the State did not protect these victims from the arbitrary executions or forced disappearances carried out by its agents. First, it did not adopt the measures required to prevent that practice. Second, it did

not adopt the measures needed to put an end to the practice once it had begun and thereby control the actions of its agents. And finally, it did not punish the perpetrators of these violations. Therefore, the Commission concludes that the State violated, to the detriment of the victims in the cases that are the subject of this report, the right to life enshrined in Article 4 of the American Convention.

The right to personal liberty

216. Pursuant to Article 7(1) of the American Convention, all persons have the right to personal liberty and security. Article 7(2) of the American Convention provides: “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. And Article 7(3) adds: “No one shall be subject to arbitrary arrest or imprisonment.” Accordingly, for a deprivation of liberty to be lawful, it must be ordered and carried out by a competent authority, for acts previously established in the law, and in keeping with the procedural provisions of domestic law and the American Convention.

217. A detention is arbitrary and illegal when it occurs outside of the grounds and formalities established by law, when it is carried out without observing the standards required by law, and when there has been an abuse of the powers of arrest, i.e. when it is done for purposes other than those provided for and required by law. The Commission has also noted that a detention for improper purposes is itself a punishment that constitutes a sort of sentence without trial, or an unlawful penalty that violates the guarantee against imposition of punishment without trial.

218. It is necessary to take into account the context in Peru, which generally affected most of the departments in which the detentions and disappearances took place. The continuous incursions of armed groups had provoked a state of permanent anxiety in the population. For this reason, several departments were declared to be under a state of emergency, which prima facie found justification in the crisis faced by the Peruvian State as it sought to combat terrorism. Under that state of emergency, Article 2(20)(g) [FN50] of the Peruvian Constitution of 1979 had been suspended in many departments, so that the military forces were legally authorized to detain a person without a warrant from a competent judge and without the need for flagrancy. Under Article 27(3) of the American Convention, a state party to the Convention must report to the other states party, through the Secretary General of the OAS, that it has suspended rights enshrined in that Convention, in order for the suspension of rights to be lawful under the Convention.

[FN50] According to which: Every person has the right: ... 20. To personal liberty and security. Accordingly: ... (g) No one may be detained other than by written and reasoned order of the Judge, or by police authorities in flagrante delicto....

219. Despite the prima facie legitimacy of this measure, the authority to detain is not an unlimited power for the security forces, by which they can proceed to detain citizens arbitrarily. The suspension of the judicial warrant for detaining a person does not mean that the public

authorities can ignore the legal conditions necessary for the lawful decree of that measure, nor that judicial checks on how arrests are carried out are voided.

220. The suspension of the guarantee of personal liberty, authorized by Article 27 of the American Convention on Human Rights, can never be total. There are principles underlying any democratic society that the security forces must observe when making a formal detention, even under a state of emergency. The legal requirements for a detention are duties that the state authorities must respect, pursuant to the State's international commitment to protect and respect human rights, acquired under the Convention.

221. Second, based on the foregoing principles, a police or military detention, as a precautionary measure, must have as its sole purpose preventing the flight of a person suspected of a criminal act, and thereby to assure his or her appearance before a competent judge, to be judged within a reasonable time or, as the case may be, released. No state may impose penalties without the guarantee of a trial preceding the penalty. [FN51] In a constitutional and democratic state under the rule of law, in which the separation of powers is respected, any penalty provided for by law must be imposed judicially and after having established the guilt of a person in a fair trial, with full guarantees. The existence of an emergency situation does not authorize the state to ignore the presumption of innocence, nor does it concern on the security forces the exercise of an arbitrary and unlimited *ius puniendi*.

[FN51] 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's personal security against being the object of an unjustified procedural risk."

222. In this regard, Article 7(5) of the American Convention prescribes: "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 without prejudice to the continuation of the proceedings." Article 7(6) 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 indicated that any person deprived of his or her liberty must be held in officially recognized places of detention and brought, without delay and in keeping with its domestic law, before the competent judicial authority. In case the authority breaches this legal obligation, the state has the duty to guarantee the detainee the possibility of filing an effective judicial remedy that allows for judicial control over the legality of the detention.

223. Applying the foregoing considerations to the cases under study, the Commission observes that in 20 of the 25 cases there is no information to suggest that any of the victims was deprived of his or her liberty pursuant to the measures explained above. To the contrary, the facts described follow the *modus operandi* of many summary executions from that period, including

the fact that in cases 11.035, 11.057, 11.065, 11.200, 10.472, and 11.292, the victims' bodies showed signs of torture.

224. In cases 10.431, 10.523, 10.564, 10.744, 10.913, 10.994, 11.035, 11.040, 11.057, 11.064, 11.065, 11.179, 11.200, 11.680, 10.247, 10.472, 10.805, 11.126, 11.132, and 11.292, it is alleged that the victims were detained illegally and arbitrarily prior to being executed or disappeared. And, in cases 10.247, 10.431, 10.472, 10.523, 10.564, 10.805, 10.994, 11.035, 11.051, 11.057, 11.064, 10.744, 11.040, 11.126, 11.132, 11.179 and 11.200, it was also reported that the military or police authorities have systematically denied having detained the victims.

225. Yet in addition, kidnapping violates the right to liberty, because the kidnapping of a human being is actually a form of illegal deprivation of liberty that also violates Article 7(5) of the American Convention, on the right of a detainee to be brought before a judge without delay, and Article 7(6), on the right to adequate remedies to review the legality of his or her arrest. As a corollary, the Commission concludes that the State is responsible for the acts of its agents upon illegally depriving of liberty, in violation of Article 7 of the American Convention, Teodoro Lorenzo Alvarado Castillo (Case 10.994), Raúl Antero Cajacuri Roca (Case 11.035), Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, Rubén Ventocilla León (Case 11.057), Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064), Ricardo Salazar Ruiz (Case 11.065), Camilo Núñez Quispe, Teófilo Núñez Quispe (Case 11.200), Moisés Carvajal Quispe (Case 11.680), Luis Miguel Pasache Vidal (Case 10.247), Walter Wilfredo Valer Munaylla (Case 10.472), Nilton Adelmo Loli Mauricio, Saturnino Serrate García, Esaú Daniel Moreno Cotrina (Case 10.805), Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, Héctor Rodríguez Rodríguez (Case 11.292), Concepción Ccacya Barrientos (Case 10.523), Ivan Roberto Tineo Rodríguez, Elías Bohórquez Tineo (Case 10.431), Luis Alberto Sangama Panaifo, Lucio Escobal Fretel (Case 10.564), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostriza, Teófilo Julio Lazo Chucos, César Teobaldo Vílchez Simeón, José Fierro Miche, Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, César Sánchez Castro (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez, and Yolanda Lauri Arias (Case 11.179), Víctor Tineo Sandoval, Guillermina Quispe and Eulogio Demetrio Bohórquez Tineo (Case 10.431), the victims in these 20 cases, and impeding their access to judicial protection through habeas corpus.

The right to humane treatment

226. Article 5 of the American Convention on Human Rights, at paragraphs 1 and 2, indicates that “every person has the right to have his physical, mental, and moral integrity respected” and

that “no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment....”

227. The United Nations Working Group on Enforced or Involuntary Disappearances has established that the forced or voluntary disappearance of a person is a particularly odious violation of human rights, and has added:

A disappearance 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 don't 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 a long time from the physical and psychological consequences of this form of dehumanization and from the brutality and torture which often accompany it. [FN52]

[FN52] UN. Human Rights. “Enforced or Involuntary Disappearances.” Informational brochure No. 6. Geneva, 1993. Pp. 1-2.

228. In the six cases identified by numbers 11.035, 11.057, 11.065, 11.200, 10.472, and 11.292, the State never challenged the petitioners’ descriptions of the marks on the corpses, nor the allegations of torture. Nor did it present any information or evidence to refute it, or demonstrate that those allegations were effectively investigated, as required by its obligations under the American Convention and the Inter-American Convention to Prevent and Punish Torture. [FN53] And it impeded the persons detained and disappeared Iván Roberto Tineo Rodríguez, Elías Bohórquez Tineo (Case 10.431), Concepción Ccacya Barrientos (Case 10.523), Luis Alberto Sangama Panaifo, Lucio Escobal Fretel (Case 10.564), Arturo Torres Quispe (Case 10.744), Flaviano Sáens Chuquivilca, Miguel Angel Cieza Galván, and Augusto Galindo Peña (Case 11.064), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, Elías Uchupe Huamán (Case 11.126), Camilo Nuñez Quispe (Case 11.200), Edith Galván Montero (Case 11.132), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, César Sánchez Castro (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179) from having any contact with any form of help or protection. That prolonged and clandestine isolation is considered by the international human rights case-law as cruel and inhuman forms of treatment, harmful of the mental and moral integrity of the person. [FN54]

[FN53] Peru signed on January 10, 1986, deposited its instrument of ratification on March 28, 1991, and the Convention entered into force for all the parties on February 28, 1987.

[FN54] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, *op. cit.*, para. 156.

229. Along these lines, the Commission concludes that the Peruvian State has violated Article 5 of the Convention to the detriment of Raúl Antero Cajacuri Roca, Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, Rubén Ventocilla León, Ricardo Salazar Ruiz, Camilo Núñez Quispe, Teófilo Núñez Quispe, Walter Wilfredo Valer Munaylla, Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, Héctor Rodríguez Rodríguez, Flaviano Sáens Chuquivilca, Miguel Angel Cieza Galván, Augusto Galindo Peña, Concepción Ccacya Barrientos, Ivan Roberto Tineo Rodríguez, Elías Bohorquez Tineo, Luis Alberto Sangama Panaifo, Lucio Escobal Fretel, Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, Elías Uchupe Huamán, Edith Galván Montero, Arturo Torres Quispe, Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, César Sánchez Castro, Esteban Romero León, Moisés Poma Ordóñez, and Yolanda Lauri Arias.

Right to juridical personality

230. Article 3 of the American Convention on Human Rights indicates that every person has the right to recognition as a person before the law. When Flaviano Sáens Chuquivilca, Camilo Núñez Quispe, Miguel Angel Cieza Galván, Augusto Galindo Peña, Concepción Ccacya Barrientos, Ivan Roberto Tineo Rodríguez, Elías Bohorquez Tineo, Luis Alberto Sangama Panaifo, Lucio Escobal Fretel, Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, Elías Uchupe Huamán, Edith Galván Montero, Arturo Torres Quispe, Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, César Sánchez Castro, Esteban Romero León, Moisés Poma Ordóñez, and Yolanda Lauri Arias were detained by state agents or persons linked to the State, and then disappeared, they were also shut out of the legal and institutional order of the Peruvian State. In this sense, the forced disappearance of persons represents the denial of their very existence as a human being with juridical personality. [FN55]

[FN55] The Declaration on the Protection of All Persons from Enforced Disappearance, Article 1(2), defines disappearance as “a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law...” UN General Assembly Resolution 47/133, December 18, 1992.

231. Therefore, the Commission finds that Peru violated the right to recognition as a person before the law, enshrined in Article 3 of the Convention, to the detriment of these victims.

Rights of the child

232. Article 19 of the American Convention on Human Rights establishes: “Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

233. Of the 25 cases under study, four refer to violations against minors. In Case 10.744, reference is made to the detention and disappearance of Arturo Torres Quispe, 16 years of age, at the hands of ronderos from the civil defense patrols of Duraznopata. Case 10.947 alleges the summary execution of the five-year-old son of Cirila de Chaico and of her sister’s two-year-old son, at the hands of members of the Army who went to the hamlet of U.T.C. where, using cutting instruments and firearms, they murdered 12 people. Case 11.040 describes the detention and disappearance by members of the peasant civil defense patrols and Peruvian Army personnel of youths Percy Borja Gaspar, 14 years of age, Angel Zanabria Ubaldo, 16 years of age, and Gumerciendo Ubaldo Zanabria, 16 years of age. Case 11.292 refers to the detention, torture, and summary execution, at the hands of Peruvian police personnel, of Jessica Rosa Chávez Ruiz, 17 years of age (and two youths who were with her); the members of the police argued that she died in combat.

234. The American Convention, at Article 19, imposes on the states, society, and the family the duty to offer the measures of protection required due to their condition as minors. The foregoing cases illustrate how the Peruvian State failed to provide the guarantees established in the American Convention, allowing several children to be tortured and summarily executed.

The right to judicial protection and to a fair trial

235. According to the allegations and information provided by the parties, it is proven that the Peruvian State has failed in its duty to investigate, identify, and punish the persons responsible for the facts and to make reparation to the victims.

236. In most of the cases, the judicial police and the judicial authorities did not identify who perpetrated the crimes. [FN56] In the few cases in which they were identified, they were not brought to trial, [FN57] and in one other there was no investigation, [FN58] which explains why the State, to this day, has not reported on any criminal investigation.

[FN56] Cases 10.431, 10.523, 10.564, 10.744, 10.878, 11.035, 11.051, 11.057, 11.064, 10.247, 11.161, 11.126, 11.132, 11.200, 11.680, and 10.472.

[FN57] Cases 10.913, 10.994, 11.040, 11.065, 11.088, 11.179, and 11.292.

[FN58] Case 10.947.

237. The petitioners in all the cases stated that they had reported the violation of human rights to the local authorities, but in only four of them were the persons allegedly responsible identified, even though later, due to legal circumstances, they did not issue guilty verdicts, and in all the other cases the proceedings were archived.

238. Article 25(1) of the American Convention provides: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention....” Article 25(1) incorporates the principle of the effectiveness of procedural instruments or means. It is not sufficient for the domestic legal order to acknowledge formally the remedy in question; it must develop the possibilities of an effective remedy, and that it be substantiated in keeping with the rules of due process.

239. Article 8(1) provides:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

240. For its part, the Court has explained the close relationship among Articles 25, 8, and 1(1):

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered.... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society.... That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature. [FN59]

[FN59] Cases of Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz, Preliminary Objections, *supra*, paras. 91, 90, and 93. Case of Loayza Tamayo, Reparations, Judgment of November 27, 1998, para. 169 (citations omitted).

241. The Court, in relation to the duty assumed by the state, has said that when a protected right or liberty has been violated, “[t]he State has a legal duty ... to take reasonable steps ... to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.” Therefore, the Court emphasizes 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 victim or his family ... without an effective search for the truth by the government.” [FN60]

[FN60] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, paras. 174 and 177.

242. In other cases, the Commission has said that the “Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,” adopted by the United Nations Economic and Social Council by Resolution 1989/65, explain what is required in cases of suspicious deaths. [FN61] In this respect, the investigation should have as its purpose to determine the cause, manner, and time of death, the person responsible, and any pattern or practice that might have brought about the death. In addition, it is to include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation should distinguish between natural death, accidental death, suicide, and homicide.

[FN61] IACHR, Report No. 55-97, Case 11,137, Juan Carlos Abella, Argentina, Annual Report of the IACHR, 1997, OEA/Ser.L/V/II.98, Doc. 6 rev., April 13, 1998, para. 412.

243. Due to the lack of an effective investigation and the resultant absence of the foundation needed to try these cases, in addition to other shortcomings in the administration of these proceedings, such as delay, the Commission concludes that the victim’s families did not enjoy the necessary due process guarantees in the determination of their rights. According to the interrelated guarantees established in Articles 25, 8, and 1(1) of the American Convention, the state has the duty to combat impunity “by all available lawful means since impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their relatives.” [FN62] Accordingly, the State is responsible for the fact that these violations remained covered by a veil of impunity, and it is responsible for violating, in the persons of the victims, the rights and guarantees established at Articles 8 and 25 of the American Convention.

[FN62] Report of the UN Special Rapporteur, Mr. Bacre Waly Ndiaye, paras. 46 and 94.

Duty of the State to respect and guarantee individual rights

244. In the cases that are the subject of the report, the Peruvian State has not met its duty under Article 1(1) of the American 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,” as it violated the human rights set forth at Articles 3, 4, 5, 7, 8, 19, and 25.

245. The first obligation of states arising from Article 1(1) of the Convention is to respect the rights and freedoms of all individuals in their jurisdiction. With respect to this obligation, the Court has stated 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 international law.” [FN63] In addition, it establishes 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.”

[FN63] Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 170.

246. The second obligation provided for in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. In this respect, the states parties have the duty “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 ... the States must prevent, investigate and punish any violation of the rights recognized by the Convention....” [FN64]

[FN64] Id., para. 166.

247. The State, in the face of alleged cases of extrajudicial execution and forced disappearance of persons, has the duty to clarify the facts, and to identify and punish the persons responsible. In the cases analyzed in this report, these essential obligations have not been met, especially when it has been shown that the State itself used its structure to implement a practice of extrajudicial executions and forced disappearances of persons during the aforementioned period. Therefore, the Commission concludes that the State has violated Article 1(1) of the Convention because it did not guarantee the exercise of the rights and guarantees of the victims identified in the cases included in this report.

VII. PROCEEDINGS SUBSEQUENT TO REPORT N° 82/00

248. The Commission approved Report N° 82/00 (Article 50) on the present case on October 5, 2000, during its 108th session. That Report, with the Commission’s recommendation, was transmitted to the Peruvian State on October 18, 2000; it was given two months to comply with the recommendations, counted from the date the Report was sent. On January 25, 2001, the State sent a communication to the IACHR, and indicated that the current Government is taking a series of measures to build a nation in which human rights are respected, to which end it is adopting the necessary measures to address all the human rights violations that have not received full and proper attention, including, among others, cases involving assassination, torture, forced disappearance, internal displacement, and the use of terrorist methods. In addition, the State added as follows:

(B) The Executive branch is planning to create a mechanism aimed at fostering implementation of the recommendations of the Inter-American Commission on Human Rights, which will materialize in coming days.

(C) In addition, the State has already adopted some measures such as Supreme Resolution N° 281-2000-Jus, of December 4, 2000, creating the Commission for the Study and Review of Legislation Adopted since April 5, 1992. It is made up of the Minister of Justice, who shall

preside over it, one representative from the Ministry of Education, a representative from the Ministry of the Presidency, one representative from the Office of the Human Rights Ombudsman, and two jurists of renowned moral character and academic standing. Its main function is to prepare a report with proposals for the legal reforms necessary to bring the legislation into line with the Constitution and the international human rights instruments.

(D) Through Supreme Resolution N° 304-2000-Jus, of December 9, 2000, the Peruvian State established an Inter-Institutional Working Group entrusted with preparing legislative and administrative proposals necessary for establishing a Truth Commission, made up of the Minister of Justice or his or her representative, who shall preside over it, the Human Rights Ombudsman, the Minister of Defense and his or her representative, the Minister of Interior and his or her representative, the Minister for Women's Promotion and Human Development or her representative, the Peruvian Bishops Conference, and the National Protestant Council of Peru. Its main functions are to present a Report and Recommendations for establishing the Truth Commission, to develop a comprehensive proposal to attend to human rights violations. In addition, this Truth Commission will establish formulas that make it possible to clarify the facts, design mechanisms of justice, establish a reparations policy, and suggest the framework for ensuring that the events that took place in Peru never recur.

(E) The Ministry of Justice has sent the Office of the Attorney General a copy of Confidential Report N° 82/00, asking that it issue a report on the investigations and the current state of all the complaints contained in it.

CONCLUSIONS

Based on the foregoing, one can conclude that the Peruvian State is taking note of the recommendations in Report N° 82/00. The Commission mentioned in item 2(D) shall propose the derogation or modification of the laws that are contrary to the Constitution and the international human rights instruments, among them, Laws N° 26,479 and N° 26,492. The Truth Commission shall have as its main objective the establishment of formulas for the timely clarification of the facts violative of human rights, and to suggest the reparations policy.

249. By communication delivered personally to the IACHR by Peruvian Minister of Justice Diego García-Sayán, before the plenary of the IACHR held February 22, 2001, during the Commission's 110th regular session, it was noted that "in the face of the essence of the recommendations on that group of cases ... (1) the Peruvian State acknowledges its responsibility for the human rights violations that have been found by the Inter-American Commission on Human Rights in its final reports. (2) This acknowledgment of responsibility implies that the Peruvian State shall adopt the legal and administrative measures needed to prevent the commission of new acts such as those that have occurred, and to make all efforts necessary to determine the persons responsible. (3) Mindful of the complexity of the context in which these violations occurred, the government has constituted a working group, made up of several sectors of the Executive, the Office of the Human Rights Ombudsman, the churches, and human rights organizations, that has been entrusted with preparing the draft legislation and other proposals deemed necessary for the establishment of a Truth Commission. This Commission will have the function of developing a comprehensive proposal for addressing the violations of human rights and international humanitarian law, arriving at formulas for determining the facts, designing mechanisms of justice, and establishing a policy of reparations for the victims. (4) Under the

constitutional provisions in force, Laws 26,479 and 26,492 cannot impede judges from performing their functions in relation to the criminal complaints that may be filed. (5) The Government shall design a policy of comprehensive attention to reparations that will be aimed at ensuring that victims of human rights violations have the opportunity to access social and educational programs free of charge.... These arguments are also applicable to the cases in which the Commission has issued a confidential report under Article 50 of the Convention.”

250. On that occasion, the IACHR issued a joint press communiqué with the Permanent Mission of Peru to the OAS stating as follows:

The Inter-American Commission reiterated its recognition of the auspicious actions the transition Government led by the distinguished president of Peru, Mr. Valentín Paniagua, is taking; of the renowned members of his cabinet; of the Honorable Congress of the Republic of Peru, related to redefining and strengthening the fundamental institutions of the state. The IACHR added that this initiative is included in that set of highly positive actions that the present Government of Peru has taken, and complements other equally important measures, such as normalization of the Peruvian situation with respect to the contentious jurisdiction of the Inter-American Court of Human Rights, the recent signing by Peru of the Inter-American Convention on Forced Disappearance of Persons, and compliance with the recommendations and precautionary measures issued by the Inter-American Commission.

The IACHR highly valued and received in a positive vein the initiative by the Government of Peru, whose purpose is to offer settlements in a large number of cases, including the following....

(d) Cases with recommendations by the Commission in reports adopted pursuant to Article 50 of the Convention: This section contains 26 cases that were recently issued and

have yet to be published. With respect to these cases, the State has also undertaken to seek comprehensive solutions to the human rights violations found by the IACHR in those reports. [FN65]

[FN65] IACHR and Permanent Mission of Peru to the OAS, Joint Press Release, February 22, 2001.

251. In keeping with the provisions of Article 51(1) of the Convention, at this stage of the procedure the Commission must determine whether the State resolved the matter. In this respect, and even though the recommendations of the IACHR have not been implemented to date, the Commission takes positive note of the various actions that the Peruvian State has initiated, through its new Government, towards complying with the recommendations made by the Peruvian State in this report. The Inter-American Commission expects that the Peruvian State will soon report that it has complied with the recommendations made in Report N° 82/00, and ratified in this report.

VIII. CONCLUSIONS

252. Based on the foregoing analysis, the Commission ratifies its conclusion that the Peruvian State is responsible for the violation of the right to life, the right to a fair trial, and the right to judicial protection, enshrined in Articles 4, 8, and 25 of the American Convention, to the detriment of:

Luis Miguel Pasache Vidal (Case 10.247), Walter Wilfredo Valer Munaylla (Case 10.472), Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805), Javier Alberto Ipanaque Marcelo, Guillermo Salinas Conde, Fidel Romero Conde, Uriol Tafur Ayala, Víctor Manuel Briceño García, and Eusebio Aniceto Garay (Case 10.878), Juan Hualla Choquehuanca, Francisco Atamari Mamani, Feliciano Turpo Valeriano, and Roberto Quispe Mamani (Case 10.913), Guillermo Marín Arenas, Gerardo Chaico, Cirila de Chaico and her five-year-old son, the sister of Cirila de Chaico and her two-year-old son, and six unidentified persons (Case 10.947), Teodoro Lorenzo Alvarado Castillo (Case 10.994), Raúl Antero Cajacuri Roca (Case 11.035), Adrián Medina Puma (Case 11.051), Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057), Ricardo Salazar Ruiz (Case 11.065), Amadeo Inca Ñaupá (or Amadeo Arcanaupa), Luciano Huamán García, Antonio Janampa Aucassi, Constantina García Gutiérrez, Marciano (or Mariano) Janampa García, Agripina Aucassi Espilico, Maura Huamán Paucar, Demetrio Huamán León, Víctor Rojas Huamán (or Víctor Huamán Paucar), Mauro Huamán Paucar, Narciso Huamán Paucar, and Melecio Chonta Huamán (Case 11.088), Pascual Chipana Huauya, Pelagia Chipana Condori, Paulina Vásquez Esquivel, Donato Pablo, Juan Cacñahuaray, Jovita Cahuana, Pelayo Capizo, and Pelagia Pillaca (Case 11.161), Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292), Moisés Carvajal Quispe (Case 11.680), Luis Alberto Sangama Panaifo and Lucio Escobal Fretel (Case 10.564), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, and César Sánchez Castro (Case 11.040), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179), Víctor Tineo Sandoval, Guillermina Quispe de Tineo, Eulogio Demetrio Bohorquez Tineo, Ivan Roberto Tineo Rodríguez, and Elías Bohorquez Tineo (Case 10.431), Concepción Ccacya Barrientos, Maximiliana Sotaya, Donato Morán, Emiliana Puga, and Fortunato Venegas (Case 10.523), Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064), and Camilo Nuñez Quispe and Teófilo Nuñez Quispe (Case 11.200).

In addition, the State is responsible for violating the right to personal liberty established at Article 7 of the American Convention to the detriment of:

Teodoro Lorenzo Alvarado Castillo (Case 10.994), Raúl Antero Cajacuri Roca (Case 11.035), Adrián Medina Puma (Case 11.051), Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, and Rubén Ventocilla León (Case 11.057), Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, Peter David Cosme Ureta (Case 11.064), Ricardo Salazar Ruiz (Case 11.065), Camilo Nuñez Quispe, Teófilo Nuñez Quispe (Case 11.200), Moisés Carvajal Quispe (Case 11.680), Luis Miguel Pasache Vidal (Case 10.247), Walter Wilfredo Valer Munaylla (Case 10.472), Nilton Adelmo Loli Mauricio, Saturnino Serrate García, and Esaú Daniel Moreno Cotrina (Case 10.805), Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, and Héctor Rodríguez Rodríguez (Case 11.292), Concepción Ccacya Barrientos, (Case 10.523), Ivan Roberto Tineo Rodríguez, Elías Bohorquez Tineo (Case 10.431), Luis Alberto Sangama Panaifo Lucio Escobal Fretel (Case 10.564), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostraza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, and Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuili Salomé, and César Sánchez Castro (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179), Víctor Tineo Sandoval, Guillermina Quispe de Tineo, Eulogio Demetrio Bohorquez Tineo (Case 10.431).

In addition, the State is responsible for violating the right to humane treatment enshrined in Article 5 of the American Convention, and its duty to prevent and punish torture established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of:

Raúl Antero Cajacuri Roca (Case 11.035), Rafael Ventocilla Rojas, Marino Ventocilla Rojas, Alejandro Ventocilla Castillo, Simón Ventocilla Castillo, Paulino Ventocilla Castillo, Rubén Ventocilla León (Case 11.057), Ricardo Salazar Ruiz (Case 11.065), Camilo Nuñez Quispe (Case 11.200), Walter Wilfredo Valer Munaylla (Case 10.472), Jessica Rosa Chávez Ruiz, Pedro Javier Cruz Guzmán, Héctor Rodríguez Rodríguez (Case 11.292), Flaviano Sáens Chuquivilca, Miguel Angel Cieza Galván and Augusto Galindo Peña (Case 11.064) Concepción Ccacya Barrientos (Case 10.523), Ivan Roberto Tineo Rodríguez, Elías Bohorquez Tineo (Case 10.431), Luis Alberto Sangama Panaifo, Lucio Escobal Fretel (Case 10.564), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostraza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuili

Salomé, César Sánchez Castro (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179), Víctor Tineo Sandoval, Guillermina Quispe, and Eulogio Demetrio Bohorquez Tineo (Case 10.431).

The State is also for violating the right to recognition as a person before the law, enshrined in Article 3 of the Convention, to the detriment of:

Flaviano Sáens Chuquivilca, Miguel Angel Cieza Galván, and Augusto Galindo Peña (Case 11.064), Camilo Nuñez Quispe (Case 11.200) Concepción Ccacya Barrientos (case 10.523), Ivan Roberto Tineo Rodríguez, Elías Bohorquez Tineo (Case 10.431), Luis Alberto Sangama Panaifo, Lucio Escobal Fretel (Case 10.564), Máximo Muñoz Solís, Levi Vivas Espinal, Alejandro Vera Suasnabar, Edgar Nestares Justo, Javier Yañac Solano, Richard Lozano Cáceres, Oscar Cirino Baldeón Chacón, Luis Alberto Ramírez Hinostroza, Teófilo Julio Lazo Chucos, César Teobaldo Volchez Simeón, José Fierro Miche, Elías Uchupe Huamán (Case 11.126), Edith Galván Montero (Case 11.132), Arturo Torres Quispe (Case 10.744), Percy Borja Gaspar, Angel Zanabria Ubaldo, Gumercindo Ubaldo Zanabria, Apolonio Lazo Rodas, Hermilio Borja Ríos, Fredy Gaspar Ríos, José Muñoz Huallpa, Ernesto Salomé Bravo, Jesús Pumahuali Salomé, César Sánchez Castro (Case 11.040), Esteban Romero León, Moisés Poma Ordóñez and Yolanda Lauri Arias (Case 11.179).

In addition, the State is responsible for the violation of the rights of the child established in Article 19 of the American Convention to the detriment of:

Arturo Torres Quispe, 16 years of age (Case 10.744), the five-year-old son of Cirila de Chaico and her sister's two-year-old son (Case 10.947), youths Percy Borja Gaspar, 14 years of age, Angel Zanabria Ubaldo, 16 years of age, and Gumercindo Ubaldo Zanabria, 16 years of age (Case 11.040), and Jessica Rosa Chávez Ruiz, 17 years of age (Case 11.292).

Accordingly, the State is responsible for breaching its duty imposed by Article 1(1) to respect and ensure the rights enshrined in the Convention with respect to the above-named victims.

IX. RECOMMENDATIONS

253. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights reiterates the following recommendations to the Peruvian State:

1. Void any judicial decision, internal measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the summary executions and forced disappearance of the victims indicated at paragraph 252. In this regard, the State should also repeal Laws N° 26,479 and 26,492.
2. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and forced disappearances of the victims and to punish the persons responsible pursuant to Peruvian legislation.
3. Adopt the measures necessary for the victim's families to receive adequate and timely compensation for the violations established herein.
4. Accede to the Inter-American Convention on Forced Disappearance of Persons.

X. PUBLICATION

254. On March 9, 2001, the Commission transmitted Report N° 24/01 (the text of which appears above) to the Peruvian State and to the petitioners, pursuant to Article 51(2) of the Convention, and gave the State an additional period of time to comply with the previous recommendations.

255. In a communication of April 18, 2001, supplemented by a communication dated May 25, 2001, the Peruvian State put forward the following considerations, among others:

(...) The cases referred to (No. 10,247 and others) on extrajudicial executions and forced disappearance of persons are to be reviewed by a Truth Commission, as proposed to the President of the Republic by the Interinstitutional Working Group created by Supreme Resolution No. 281-2000-JUS. This Truth Commission reflects the need to know what really happened in our country, and to be able to understand the causes and factors that produced such a situation of human rights violations, and in this way to begin the conscious and deliberate process of re-institutionalizing democracy in Peru, and bringing about national reconciliation.

(...)

The deeds to be considered by the Truth Commission are limited to those that took place essentially between May 1980 and December 31, 2000, involving human rights violations in Peru (including a series of cases covered by Report No. 24/01 on extrajudicial executions and forced disappearance of persons) as well as acts attributable to terrorist groups, and those deriving from State actions.

The Truth Commission will prepare proposals for full reparations and the restoration of dignity to the victims of severe violations of human rights, and their relatives. This is consistent with the third recommendation of the I-ACHR, which calls for reparations to relatives of the victims. The idea is to deal in a comprehensive matter with this dimension of the human rights violations referred to.

(...)

In this respect, the Peruvian State considers that an initial step in addressing the second recommendation contained in Report N° 24/01 should be to transfer the cases covered by that Report to the Truth Commission.

As well, the Public Defender has launched an investigation into the forced disappearance of persons in Peru, covering the period 1980-1996, i.e. the lapse of time in which the events covered by Report N° 24/01 took place. (...) This investigation is a further sign of the Peruvian State's efforts to fulfill the recommendations of the Commission.

(...)

With respect to the fourth recommendation of the IACHR, Peru signed the Inter-American Convention on the Forced Disappearance of Persons on January 8, 2001, and it is now pending ratification by the Peruvian Congress.

(...)

Finally, the Executive Branch has transmitted Report N° 24/01 to the Ministries of Defense and the Interior, as well as the Judicial Branch and the Attorney General's Office, so that they may take steps consistent with their constitutional and legal responsibilities.

CONCLUSIONS

Without prejudice to the steps they may be taken in the coming weeks, the Peruvian State submits this information, and reiterates to the Inter-American Commission on Human Rights its firm commitment to consider the recommendations contained in Report N° 24/01. In particular, the Peruvian State intends to comply with recommendations 2, 3 and 4 of that Report.

256. The Inter-American Commission appreciates the declarations of the Peruvian State as to the actions undertaken to comply with the Commission's recommendations. Pursuant to Article 51 (3) of the American Convention and 45 (3) of its Rules of Procedure, the Commission decides to reiterate the conclusions and recommendations contained in chapters VIII and IX supra; to publish this Report and include it in its Annual Report to the OAS General Assembly. Consistent with its mandate and the provisions of Article 46 of its Rules of Procedure, the Commission will continue to evaluate the measures taken by the Peruvian State with respect to the recommendations formulated, until these have been fulfilled. In this respect, the Inter-American Commission requests the State to provide quarterly reports on progress in fulfilling the recommendations.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 11, 2001. Signed by Hélio Bicudo, President; Claudio Grossman, First Vice President; Juan Méndez, Second Vice President; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.