Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Kenneth Ney Anzualdo Castro, Felix Vicente Anzualdo Vicuna, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro v. Peru
Doc. Type:	Judgement (Preliminary Objection, Merits, Reparations and Costs)
Decided by:	President: Cecilia Medina-Quiroga; Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu-Blondet; Victor Oscar Shiyin Garcia Toma On August 7, 2008, Judge Diego Garcia-Sayan, Peruvian, requested the President of the Court to accept his disqualification from hearing the instant case since, "[d]espite there is no element that could affect [his] absolute independence and impartiality in the case", he considered "it was appropriate to disqualify [himself] from hearing the case in order to guarantee, then, the perception of the parties and third parties regarding the total independence and impartiality of the Tribunal considering [he is] a national of Peru." He further asserted, inter alia, that "it is perfectible compatible with the Convention that a judge requests its disqualification from the deliberation of the case for the mere fact of being a national of the respondent State." By means of note of August 7, 2008 the President appreciated the concern of Judge Garcia- Sayan to preserve the objective impartiality of this Court and therefore, accepted such disqualification. As a result, upon notice of the application (infra para. 7), the State was informed about said disqualification and was advised about the possible appointment of an Judge ad hoc to intervene in the deliberation and decision of this case. In turn, the State was also informed that the Tribunal had received and was examining a request for advisory opinion filed by the Argentine State, widely disseminated, in which it was being analyzed, inter alia, whether the institution of an Judge ad hoc would be only possible in inter-state contentious case. On September 22, 2008 the State appointed Mr. Victor Oscar Shiyin Garcia Toma as Judge ad hoc.
Dated:	22 September 2009
Citation:	Anzualdo Castro v. Peru, Judgement (IACtHR, 22 Sep. 2009)
Represented by:	APPLICANTS: Gloria Cano, Jorge Abrego, Viviana Krsticevic, Ariela Peralta, Alejandra Vicente and Mr. Francisco Quintana
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In the case of Anzualdo Castro v. Peru,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and Articles 29,

31, 37(6), 56 and 58 of the Court's Rules of Procedure (hereinafter, the "Rules of Procedure", [FN2] delivers this Judgment.

[FN2] According to the provision of Article 72(2) of the Rules of the Procedure of the Inter-American Court in force, the reforms of which entered into forced on March 24, 2009, “cases pending resolution shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened upon the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure.” In this way, the Rules of Procedure of the Court mentioned in this Judgment corresponds to the document approved by the Tribunal in its XLIX Ordinary Period of Sessions held from November 16 to 25 2000 and partially amended by the Court in its LXI Ordinary Period of Sessions held from November 20 to December 4, 2003.

I. INTRODUCTION TO THE CASE AND PURPOSE OF THE APPLICATION

1. On July 11, 2008 the Inter-American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") submitted to the Court, under the terms of Articles 51 and 61 of the American Convention, an application against the Republic of Peru (hereinafter, the “State” or “Peru") in relation to case Nº 11.385, originating in petition forwarded to the Secretariat of the Commission on May 27, 1994 by the Association for Human Rights (APRODEH). On October 16, 2007, the Commission adopted the Report on Admissibility and Merits N° 85/07, under the terms of Article 50 of the Convention, in which certain recommendations were made to the State. [FN3] On July 10, 2008, the Commission decided to submit the instant case to the jurisdiction of the Inter-American Court, in accordance with Articles 51(1) of the Convention and 44 of its Rules of Procedure. The Commission designated Commissioner Paolo Carozza, member of the Commission, and Executive-Secretary Santiago A. Canton as its delegates in this case and Assistant Executive Secretary Elizabeth Abi-Mershed, Norma Colledani and Lilly Ching, as legal advisors.

[FN3] In the report on admissibility and merits, the Commission found the case admissible and ruled about its jurisdiction to hear the case; it also concluded that Peru “violated
Kenneth Ney Anzualdo Castro’s right to recognition of juridical personality, to life, to humane treatment, to personal liberty, a fair trial and judicial protection, as enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the provisions of Articles 1(1) and 2 of the aforesaid international instrument and Article I of the Convention on Forced Disappearance. Furthermore, it concluded that the State is responsible for violation of the right to humane treatment, a fair trial and judicial protection of the victim’s next of kin as enshrined in Articles 5, 8 and 25 of the Convention and in connection with the general obligation in Article 1(1) to respect and ensure and the duty to adopt legislative or other measures as set forth in Article 2 of the Convention.” Finally, the Commission made certain recommendations to the State.

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2. The facts presented by the Commission referred to the alleged forced disappearance of Kenneth Ney Anzualdo Castro (hereinafter, “Mr. Anzualdo Castro") as of December 16, 1993, allegedly committed by members of the Army’s Intelligence Service (hereinafter, “SIE”) at the time of the events. It was alleged that on the day he was kidnapped or arrested, Mr. Anzualdo Castro would have been taken to the basement of the Army's headquarters, where he would have been possibly executed and his body incinerated at the incinerators installed in those basements. The Commission pointed out that the facts are framed within a “pattern of extrajudicial executions, forced disappearances and massacres attributed to State agents and groups linked to public security agencies”, favoring a pattern of impunity in the investigation and pursuit of this type of facts.

3. The Commission requested the Court to declare the State of Peru is responsible for the violation of the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in connection with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, as well as the violation of Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter, the “ICFDP”), to the detriment of Kenneth Ney Anzualdo Castro. Moreover, the Commission alleged that the State is responsible for the violation of the rights enshrined in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in connection with Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of his next-of-kin, namely, Mr. Felix Vicente Anzualdo Vicuña, his father; Iris Isabel Castro Cachay de Anzualdo (deceased) his mother and his siblings, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro. As a result of the above mentioned, the Commission requested to the Court that the State be required to take certain measures of reparation and reimburse the costs and expenses.

4. On October 19, 2008, Mrs. Gloria Cano and Mr. Jorge Abrego, of the Association for Human Rights (APRODEH), Mrs. Viviana Krsticevic, Ariela Peralta and Alejandra Vicente and Mr. Francisco Quintana, of the Center for Justice and International Law (CEJIL) (hereinafter, the "representatives"), submitted a brief containing pleadings, motions and evidence with the Court, under the terms of Article 23 of the Rules of Procedure (infra para. 7). In this brief, they referred to the facts mentioned in the application by the Commission and considered that such facts were framed within “a systematic practice of forced disappearances at the hands of state agents, […] conducted selectively against university students, among others; […] [which] was well-known and consented by the highest-ranking authorities of the state’s government.” As a result, the representatives requested the Court to declare the international responsibility of the State for the same violations of the Convention as alleged by the Commission and, also, for the violation of Article 13 of the American Convention, which, according to them, conforms the right to the truth to the detriment of the next-of-kin of Kenneth Ney Anzualdo Castro and "the Peruvian society as a whole", as well as the non-compliance with the obligation to adequately classify the crime of forced disappearance, under the terms of Articles I (d), II and III of the Inter-American Convention of Forced Disappearance of People, and also embodied in Article 2 of the American Convention. Finally, the representatives requested the Court to order the State to adopt certain measures of reparation and to reimburse costs and expenses.

5. On December 22, 2008, the State of Peru filed the response to the petition, the observations to the brief containing pleadings, motions and evidence and the preliminary objection of non-exhaustion of domestic remedies after considering that "even though there has been a delay in the processing of the case […], there is a complaint […] processed by the Third Supranational Public Prosecutor's Office" in relation to the facts of this case. Furthermore, the State requested the Court to "define the boundaries of the State's liability, as attributed to it by the Inter-American Commission in the petition, for the [f]orced disappearance [of the alleged victim…]", given the fact that "said disappearance has not been at the hand of the [P]eruvian [s]tate [a]gents, but the terrorist group Sendero Luminoso." The State indicated that it is not responsible for the alleged violations and therefore, "cannot repair the next-of-kin for the alleged damage caused" or comply with the measures of reparations so requested. The State appointed Mr. Jaime José Vales Carrillo as Agents in the instant case, who was. later on replaced by Delia Muñoz Muñoz, Supranational Specialized Attorney General of Peru.

6. In accordance with Article 37(4) of the Rules of Procedure, on February 6 and 9, 2009 the Commission and the representatives, respectively, presented the written arguments on the preliminary objection raised by the State.

II. PROCEEDING BEFORE THE COURT

7. The application was served on the State and the representatives via facsimile on August 14, 2008. During the proceeding before this Tribunal, apart from the main briefs submitted by the parties (supra paras. 1 to 5), the Court's President (hereinafter, the "President") ordered, by means of a Resolution [FN4] the submission of affidavits, testimonies of four witnesses and one expert witness proposed by the representatives, in respect of whom the parties had the opportunity to present their comments. Furthermore, the President convened the Commission, the representatives and the State to a public hearing to listen to the declarations of three witnesses and one expert witness, proposed by the Commission and the representatives, as well as the final oral arguments of the parties regarding the preliminary objection and merits, reparations and costs. Lastly, the President ordered the parties to present the final written arguments no later than May 12, 2009.

[FN4] Cf. Order of the Court's President of February 26, 2009.

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8. The public hearing was held on April 2, 2009 during its XXXVIII Extraordinary Period of Sessions, in the city of Santo Domingo, Dominican Republic. [FN5]

[FN5] To this hearing, there appeared: a) on behalf of the Inter-American Commission: Juan Pablo Albán and Lilly Ching, advisers; b) on behalf of the representatives: Jorge Abrego Hinostroza from APRODEH, and Ariela Peralta, Francisco Quintana and Alejandra Vicente for CEJIL; and c) on behalf of the State: Delia Muñoz Muñoz, Supranational Specialized Attorney General's Office, as Agent and Guillermo Santa María D´Angelo, attorney of the Supranational Specialized Attorney General's Office, as Deputy Agent. Furthermore, the Tribunal listened to

the testimony rendered by Felix Vicente Anzualdo Vicuña and Marly Arleny Anzualdo Castro and the expert opinion of the expert witness, José Pablo Baraybar Do Carmo.
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9. On April 22, 2009 the State presented the final written arguments, whereas the Commission and the representatives filed their arguments on May 11 and 12, respectively.

10. On April 23, 2009 the State presented an "extended pleading" and on May 8, of that same year, it forwarded a "supplemental pleading", both to the final written arguments, briefs that have been taken into account given the fact that they were forwarded within the time limit established to that effect (supra para. 7).

11. On June 30, 2009 Peru forwarded a brief entitled "comments to the final written arguments of the Commission and the representatives." On July 22, 2009, following the instructions of the President, the Secretariat communicated to the parties that, considering that the forwarding of observations to the final written arguments of the other parties is not contemplated in the Rules of Procedure, said brief of the State should be considered inadmissible and therefore, the additional term to present comments, requested by the representatives, should also be considered inadmissible.

III. PRELIMINARY OBJECTION ("Failure to exhaust domestic remedies")

12. The State alleged that in December 2008 "the Office of the Special Provincial Attorney for Human Rights of Peru filed a criminal complaint with the competent court, in order to conduct a judicial investigation", for the alleged "crime against humanity- Forced Disappearance- to the detriment of the Society and Kenneth Ney Anzualdo Castro, among other people, and for breach of Public Order under conspiracy to commit a crime, to the detriment of the State." Furthermore, it emphasized that the Third Special Criminal Trial Court issued an order for preliminary proceedings to commence on account of such complaint.

13. The Commission noted that the criminal complaint referred to by the State was filed after the adoption of the Report on Admissibility and Merits, in which the Commission had already taken into account the arguments of the State and in which it considered that it was appropriate to apply the exception to the rule of exhaustion under the terms of Article 46(2)(b) and (c) of the Convention. It alleged that the reference to a new complaint made by the State is "excessively vague, groundless and inadmissible", given the fact that the State had timely access to the remedies and had the opportunity to settle the situation before the matter was submitted before the Inter-American system. According to the Commission, the State has the burden of proof regarding the arguments on the preliminary objection and the State failed to prove that the injured party had the suitable and necessary remedies to settle the case at the domestic level. Moreover, the Commission indicated that the argument of the State regarding the criminal proceeding that is pending and was recently instituted, is admissible after 15 years of the occurrence of the facts and that it only proves that the petitioners had no suitable remedies to settle the case in due time. Based on the foregoing, the Commission considered that the preliminary objection raised "is groundless" and must be rejected.

14. In addition, the representatives held that the Court must reject the preliminary objection since the Commission has already conducted an examination of admissibility in accordance with Articles 46 and 47 of the Convention. According to them, once such examination is conducted, and in order to obtain legal certainty and procedural safety, the principle of procedural preclusion operates, which even though it is not absolute, it means that the decision of the Commission "is final and indivisible." Moreover, they alleged that the State "did […] not raise the [preliminary objection] in due time, nor has it properly based and proved its claim, inasmuch as it was inconsistent regarding the grounds of the claim during the processing of the case before the Commission and then the Court, by raising the objection based on different reasons. They held that the State did not mention any of the specific remedies that it considers the alleged victims and their representatives have failed to exhaust, nor has it proved said remedies to be adequate. They considered that the formal filing of the criminal complaint is an exclusive power of the Public Prosecutor's Office and it does not constitute a remedy that the petitioners can access or exhaust. Without detriment to the foregoing, they highlighted that there has been an unwarranted delay in the substantiation of the available remedies on the part of the State, which was determined by the Commission and acknowledged by the State itself and which exonerates the petitioners from exhausting them. Nevertheless, the next-of-kin "have exhausted all existing remedies and instances to expedite the investigation into the facts and to try and punish the responsible."

15. The Court has already developed clear guidelines for the analysis of the rule of exhaustion of domestic remedies, considering the respective formal and material conditions to analyze in each case. [FN6]

[FN6] Cf. Case of Velásquez Rodríguez V. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88 and Case of Escher et al. V. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 199, para. 28; Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 42 and Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 37.

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16. In the instant case, the Court notes that the argumentative basis used by the State to raise such preliminary objection before the Court is different regarding what was alleged in the proceeding before the Inter-American Commission. On the one hand, before this Tribunal, the State claims that the formal filing of the criminal complaint in December 2008 and the opening of the investigation must be considered as an existing remedy that has not been exhausted by the alleged victims. On the other hand, during the processing of the case before the Commission, the State alleged the lack of exhaustion of domestic remedies by referring, specifically, to a procedure of habeas corpus and a criminal investigation conducted by the Office of the Fifth Provincial Prosecutor of Callao. [FN7]

[FN7] According to what spring from the case file of the processing before the Commission, the petition was received on May 27, 1994 and on September 27 that same year, the pertinent copy of the petition was transmitted to the State and the State, in turn, was requested to forward any evidence that would allow assessing whether the remedies have been exhausted at the domestic level. In its response, presented in November 1994, Peru forwarded a certified copy of the case-file of the habeas corpus proceeding instituted to determine the whereabouts of Mr. Anzualdo Castro. In an official letter appendixed to that communication, the Commander-in-Chief of the Navy indicated to the Ministry of Defense that "the petitioner has not exhausted all the remedies available at the domestic level." In another communication, it forwarded a report of December 23, 1997 from the National Human Rights Council, in which the State mentioned a criminal investigation instituted before the Office of the Fifth Provincial Prosecutor of Callao and held that "the complaint of the petitioner was filed, registered and communicated to the Peruvian State on [September] 27, 1994 when there were still remedies available at the domestic level", since the complaint against the decision that determined to provisionally close the investigation was submitted on October 27, 1994, "therefore, the petition before the Commission must be declared to be inadmissible." The Court notes that at the moment of the filing of the petition before the Commission, the first of the two remedies has already been declared inadmissible and, regarding the second one, five days after, the investigation was provisionally closed. See Appendix 1 of the application: IACHR, Report on Admissibility and Merits Nº 85/07, case 11.385, Kenneth Ney Anzualdo Castro of October 16, 2007, para. 47-49 and 52-64 and Appendix 2 of the application (record of evidence, volume II, pages 76, 137 and 183).

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17. In this way, when the Inter-American Commission adopted the Report on Admissibility and Merits Nº 85/07 on October 16, 2007, it noted that the " petitioners have adopted an active role since the allegedly forced disappearance of the young Kenneth Anzualdo, by taking judicial actions as well as other private actions", which was described. It considered that the injured party "tried to file all the available remedies" in order to shed light on the alleged forced disappearance of Mr. Anzualdo Castro and that "after more than thirteen years" [of such incident], the State "ha[d] not tried and punished the responsible." It deemed that the "application of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantee to have access to justice […]; it pointed out that the "causes and effects that have impeded the exhaustion of the domestic remedies in this case" shall be analyzed in the merits and, therefore, it considered that "there were sufficient evidence to exonerate the petitioner from the requirement of prior exhaustion of domestic remedies by application of Article 46(2)(b) and (c) of the American Convention." [FN8]

[FN8] Appendix 1 of the application: IACHR, Report on Admissibility and Merits Nº 85/07, case 11.385, Kenneth Ney Anzualdo Castro of October 16, 2007, paras. 60 and 63.

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18. As it spring from the body of evidence (infra para. 127), prior to the investigation mentioned by the State, several investigations have been conducted at the domestic level in relation to the alleged forced disappearance of Mr. Anzualdo Castro. In this sense, two different

phases can be distinguished: on the one hand, the first investigations opened in 1993, and on the other hand, the other investigations conducted as of the year 2002. In the first phase, between December 1993 and February 1994, the next-of-kin of Mr. Anzualdo filed a first criminal complaint with the prosecution office and another complaint with the Investigation Department of Disappeared people of the National Police of Peru, a complaint with the Office of the Special Prosecutor of Public Defense and Human Rights, and a writ of habeas corpus. In the second phase, as of the year 2002, the next-of-kin filed a request to reopen the investigations before the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves; they were involved in the oral criminal proceeding before against former president Fujimori for the alleged commission of several crimes, to the detriment of the persons named in the intake logbooks of the SIE and they also participated in the processing of the investigation against Vladimiro Montesino et al.

19. Under such terms, the Court notes that there is no controversy as to the decision made by the Commission in its report Nº 85/07, since the formal filing of the complaint mentioned by the State occurred after the approval of such report and on the same day that the State filed its answer to the application in this case. In this regard, the other complaint and the corresponding opening of an investigation, after more than 15 years of the alleged forced disappearance, cannot be validly alleged by the State, insofar as such fact could precisely confirm that the alleged victims had no access to effective remedies in the instant case, as has been considered by the Commission in the Report on admissibility and merits. The analysis of the foregoing would correspond to the merits of the case and the Tribunal finds no grounds to depart from what was decided by the Commission in its Report. Based on these reasons, the Court deems that the preliminary objection raised by the Stat is groundless, and should be declared inadmissible.

IV. COMPETENCE

20. The Court has jurisdiction over this case, in accordance with Article 62(3) of the American Convention, given the fact that Peru has been a State Party to the American Convention since July 28, 1978 and has accepted the binding jurisdiction of the Court on January 21, 1981. Besides, Peru ratified the Inter-American Convention on Forced Disappearance of Persons on February 13, 2002.

V. EVIDENCE

21. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on the Court's case-law regarding the evidence and assessment thereof, [FN9] the Court shall now examine and assess the documentary evidence forwarded by the parties at the different procedural stages, as well as the affidavits presented and those rendered during the public hearing.

[FN9] Cf. Case of the Mayagna (Sumo) Awas Tingni Community V. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 86; Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50; Case of Bámaca Velásquez V. Guatemala. Reparations and

Costs. Judgment of February 22, 2002. Series C No. 91, para. 15. See also Case of the Miguel Castro Castro Prison V. Perú. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 183 and 184; Case of Almonacid Arellano et al. V. Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006, Series C No. 154, paras. 67, 68 and 69; and Case of Servellón García et al. V. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 34.

A) Documentary, Testimonial and Experts'Opinion Evidence

22. The Court received the affidavits rendered by the following alleged victims, witnesses and expert witnesses:

a) Rommel Darwin Anzualdo Castro, proposed by the representatives, brother of Kenneth Ney Anzualdo Castro and alleged victim in the instant case. His statement was about, inter alia, the profile of his brother; the family life before his disappearance; the actions taken to know the truth of what happened; the consequences the disappearance of his brother and the alleged lack of justice had for his personal and family life;
b) Victor Manuel Quinteros Marquina, witness proposed by the representatives and investigator for the book of Mr. Ricardo Uceda entitled "Muerte en el Pentagonito." He rendered a statement about, inter alia, the disappearance of Anzualdo Castro and what he knew about the case;
c) Javier Roca Obregón, witness proposed by the representatives. His statement was about the relevance of the disappearance of his son, Martin Javier Roca Casas, in relation to the disappearance of Kenneth Ney Anzualdo Castro, as well as the manner in which he made contact with Kenneth and the assistance he provided to shed light on the whereabouts of his son;
d) Santiago Cristóbal Alvarado Santos, witness proposed by the representatives and driver of the bus in which Kenneth Ney Anzualdo Castro was travelling on the day of his disappearance; he declared about the incident that occurred on December 16, 1993 when several people intercepted the vehicle he was driving and three of the passengers were forced to get out of the bus, including Mr. Anzualdo;
e) Carlos Alberto Jibaja Zárate, expert witness proposed by the representatives, bachelor's degree in Clinical Psychology and Executive Director of the Center for Psychosocial Care, in Lima, Peru. While giving his opinion, he analyzed the psychological effects produced on the family of Kenneth Ney Anzualdo Castro after his disappearance and before the alleged lack of the State's response in that regard, and
f) Carlos Martín Rivera Paz [FN10], witness proposed by the representatives, Lawyer and Vice-President of the Legal Defense Institute [Instituto de Defensa Legal], a non-governmental organization. He rendered a statement about the different aspects of the special legal system of Peru and the necessary measures to repair the damages.

[FN10] Even though Mr. Rivera Paz was convened to render a statement at the hearing, the representatives requested the Court to accept his declaration by means of an affidavit. This has not been challenged by the parties.

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23. As to the evidence produced at the public hearing, the Court heard the testimonies rendered by the following people:

a) Felix Vicente Anzualdo Vicuña, proposed by the Commission, father of Kenneth Ney Anzualdo Castro and alleged victim in the instant case; he declared about, inter alia, the effects produced by the disappearance of his son and the lack of identification and punishment of the responsible, as well as the effects that these facts had on his family;
b) Marly Arleny Anzualdo Castro, proposed by the representatives, sister of Kenneth Ney Anzualdo Castro and alleged victim in the instant case. She rendered a statement about the family relationship before the disappearance of his brother; the measures she adopted, as well as the State's response, to establish the fate or whereabouts of his brother or the location and identification of his mortal remains; and the consequences that such disappearance and the alleged lack of justice have had in her personal and family life, and
c) José Pablo Baraybar do Carmo, expert witness proposed by the representatives and member of the Peruvian Team of Forensic Anthropology [EPAF]. He gave an expert opinion about, inter alia, the assessment that such organization made in relation to the report prepared by the forensic police about the incinerator located in the basements of the Army Intelligence Service, as well as other forensic aspects related to the investigation of the case and the necessary measures to repair the damage from the field of his specialization.

B) Evidence Assessment

24. In the case at hand, as in many other cases, [FN11] the Court admits the evidentiary value of such documents timely forwarded by the parties that have not been disputed nor challenged, or its authenticity questioned.

[FN11] Cf. Case of Velásquez Rodríguez V. Honduras. Merits. Judgment of July 29, 1998. Series C No. 4, para. 140; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, para. 26; Case of Reverón Trujillo V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 29.

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25. Regarding the press clippings submitted by the parties, at the appropriate procedural opportunity, this Tribunal considers that they may have evidentiary value insofar as they refer to public and notorious facts or statements made by state officials or when they corroborate aspects related to the case [FN12] and evidenced by other means. [FN13]

[FN12] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 146; Case of "White Van" (Paniagua Morales et al.) v. Guatemala, Merits. Judgment of March 8, 1998. Series C, Nº 37, para. 75; Case of Escher et al. V. Brazil, supra note 6, para. 76; case of Acevedo

Buendía et al. (“Discharged and Retired Employees of the Comptroller”) V. Peru. Supra note 11, para. 39.
[FN13] Cf. Case of the Rochela Massacre V. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 59; Case of Escher et al. V. Brazil, supra note 6, para. 76; case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) V. Peru. Supra note 11, para. 39
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26. With respect to the testimonies and expert’s opinions, the Court consider they are relevant inasmuch as they adjust to the purpose defined by the President in the Order requesting them (supra para. 7), which shall be assessed in the corresponding chapter. As to the statements rendered by the alleged victims, such statements shall not be assessed separately for they have a direct interest in the outcome of the case and therefore, they must be assessed as a whole with the rest of the body of evidence of the proceeding. [FN14]

[FN14] Cf. Case of Loayza Tamayo V. Perú. Merits. Judgment of September 17, 1997. Series C. Nº 33, para. 43; case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) V. Peru. Supra note 11, para. 27; Case of Kawas Fernández V. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 40.
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27. The State requested not to consider the expert opinion rendered by José Pablo Baraybar Do Carmo to be valid given the fact that it deems that the expert witness made a mere appraisal, without scientific rigor, and that he did not base his statements on a direct or truth fact. [FN15]

[FN15] Specifically, the State alleged that the expert witness: a) made an appraisal when he indicated that there was no policy related to the forensic investigation field in Peru, addressed to search for the disappeared people in Peru during the armed conflict, while he was not aware of the fact that in Peru, the Institute of Legal Medicine [Instituto de Medicina Legal]- which forms part of the Office of the Public Prosecutor- has published both directives in the Official Gazette “ El Peruano”; b) there was no scientific accuracy in his opinion since it was not based on his personal expert examination for the gathering of information, but on third parties' examinations; c) he never mentioned to have found, in the procedure of 2002 at the basements of the Army’s headquarters, proof or evidence of the disappearance of Kenneth Ney Anzualdo Castro; d) as to the price of the DNA tests, “he has not showed one document that may determine the truthfulness of the amounts he claimed", which are more expensive than he indicated; e) he did not clearly explain the value of the proposal for the creation of a DNA bank, which "is impossible to complete" inasmuch as an unknown universe of disappeared people must be created; f) the figure mentioned as to the number of forced disappearances of 1.5 percent of an unknown universe "reveals an inappropriate and light use of the sense of the reality of the Republic of Peru.”
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28. Regarding the objections of the State to said expert opinion, this Tribunal has understood that, unlike witnesses, expert witnesses may render technical or personal opinions insofar as they fall within their special knowledge or experience and they may refer to specific aspects of the case as well as other relevant aspects thereof, so long as they are limited to the purpose for which the same were requested. [FN16] Regarding the other objections of the State, the Court considers that they may be analyzed, where appropriate, in the study of the merits of the case, given that it is a matter of evidentiary weight and not of admissibility of the evidence. [FN17] Therefore, the Tribunal admits the expert report of the expert witness and shall assess it along with the body of evidence.

[FN16] Cf. Case of González et al. ("Cotton Field") V. Mexico. Order of the Court's President of March 18, 2009, considering clause 75; and Case of Reverón Trujillo V. Venezuela, supra note 11, para. 42.
[FN17] Cf. Case of Reverón Trujillo V. Bolivia, supra note 11, para. 43.

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29. Upon formally examining the evidence contained in the records of the instant case, the Court shall now proceed to analyze the alleged violations of the American Convention in consideration of the proven facts, as well as the legal arguments of the parties. In doing so, the Tribunal will assess them on the basis of sound judgment, within the applicable legal framework. [FN18] It is worth mentioning that international courts are deemed to have authority to appraise and assess evidence following the rules of logic and based on experience, and has always avoided rigidly setting the quantum of evidence required to reach a decision. [FN19]

[FN18] Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala, Merits, supra note 12, para. 76; Case of Escher et al. V. Brazil, supra note 6, para. 55; and Case of Reverón Trujillo V. Bolivia, supra note 11, para. 26.
[FN19] Cf. Case of "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and costs; supra note 9, para. 51; Case of Perozo et al. V. Venezuela, supra note 6, para. 112; and Case of Rios et al. V. Venezuela, supra note 6, para. 101.

VI. ON THE FORCED DISAPPEARANCE OF KENNETH NEY ANZUALDO CASTRO (ARTICLE 7 (PERSONAL LIBERTY) [FN20], 5 (HUMANE TREATMENT) [FN21], 4(1) (LIFE) [FN22] AND 3 (JURIDICAL PERSONALITY) [FN23] OF THE AMERICAN CONVENTION, IN CONJUNCTION WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN24] THEREIN AND ARTICLES I [FN25], II [FN26], III [FN27] AND XI [FN28] OF THE INTER—AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS)

[FN20] Article 7
1. Every person has the right to personal liberty and security.
[FN21] Article 5

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[FN22] Article 4

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

[FN23] Article 3

Every person has the right to recognition as a person before the law.

[FN24] Article 1(1)

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[FN25] Article I

The State Parties to this Convention undertake:

a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

[FN26] Article II

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

[FN27] Article III (pertinent part)

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as and offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

[FN28] Article XI

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

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30. The Commission as well as the representatives alleged that, based on the evidence produced and considering the systematic patterns of forced disappearance committed by state agents at the time of events, the State is responsible for the forced disappearance of Mr. Anzualdo Castro committed by members of the then Army Intelligence Service. Based on the foregoing, the Commission considered that the State has failed to fulfill the commitment “not to

practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees", stipulated in Article I of the ICFDP. The Commission claimed that, considering that the forced disappearance occurred in the context of said patterns and given the fact that it is a crime of continuous or ongoing nature, this circumstance put the state in a situation of permanent infringement of its international obligations to respect and guarantee the violated rights.

31. In this case, the State has denied that the disappearance of Mr. Anzualdo Castro is attributable to state agents and has emphasized that Sendero Luminoso is responsible for his disappearance (infra paras. 35 and 38 to 41).

32. Before entering into the analysis of the legal arguments per se, it is appropriate for the Tribunal to determine, in the framework of the evidence produced regarding the facts of the instant and the context in which they occurred, whether the disappearance of Mr. Anzualdo is attributable to the State.

A. Facts of the instant case and context in which they occurred

33. The Court considers the facts mentioned in this paragraph and the next paragraph as proven, based on the evidence furnished and declared admissible or given that such facts were not contested: Kenneth Ney Anzualdo Castro was born on June 13, 1968. [FN29] At the time of the events, he was 25 years old and was a student of Economics at Escuela Profesional de Economía, Universidad Nacional del Callao. [FN30] He was linked to the Students' Federation. In October 1991, the house where he lived, together with this family, was inspected and Anzualdo Castro was arrested together with other people, for alleged terrorist activities for which he was held in custody for 15 days at the National Office Against Terrorism (hereinafter, "DINCOTE"). [FN31]

[FN29] Cf. Birth certificate of Kenneth Ney Anzualdo Castro of June 14, 1968 (record of evidence, volume VIII, appendix 1 to the brief of pleadings and motions, page 2702).
[FN30] Cf. Studies Certificate N°. 2833- 2008- OAGRA of Mr. Kenneth Ney Anzualdo Castro (record of evidence, volume VIII, appendix 4 to the Brief of Pleadings and Motions, page 2708).
[FN31] Cf. Testimony rendered by Mr. Felix Vicente Anzualdo Vicuña at the public hearing held by the Inter-American Court on April 2, 2009; testimony rendered by Mr. Felix Vicente Anzualdo Vicuña before the Truth and Reconciliation Commission on June 22, 2002 (records of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2757); Truth and Reconciliation Commission, testimony record N° 100079 rendered by Felix Vicente Anzualdo Vicuña (record of evidence, volume V, appendix 31 to the application, pages 1844-1865); Statement of Felix Vicente Anzualdo Vicuña rendered before the Office of the Fifth Provincial Prosecutor for Criminal matters of Callao on January 17, 1994 (record of evidence, volume V, appendix 11 to the application, page 1737); statement of Marly Arleny Anzualdo Castro before the Office of the Fifth Provincial Prosecutor for Criminal matters of Callao on January 17, 1994 (record of evidence, volume V,, appendix 11 to the application, page 1734); affidavit rendered by Rommel Darwin Anzualdo Castro on March 9, 2009 (record of evidence, volume IX, pages 4335-4339); press releases (record of evidence, volume IX, appendix 5 to the State's response,

pages 3491-3495) and Report N° 028-DAN-DIVICOTE-2-DINCOTE of June 16, 1997 (record of evidence, Volume IX, appendix 6 to the State's response, pages 3497- 3499).

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34. On December 16, 1993 Kenneth Ney Anzualdo Castro left the home of his father, Mr. Félix Vicente Anzualdo Vicuña, located in La Perla, Callao, at 04.00 P.M. to go to the University [FN32]. He was at the University until, approximately, 08.45 P.M., when he decided to go home. In the company of three fellow students of the University, he walked to the bus stop at Avenida Santa Rosa, where he got on a 19-B bus, license plate number 3738 that would take him home. They saw him get on the bus, which was driven by Santiago Cristóbal Alvarado Santos [FN33]. During the journey from the University to his home, in the vicinity of Avenida Santa Rosa and Avenida La Paz, a light-blue automobile intercepted the bus, which Kenneth had boarded. Three persons dressed in plain clothes got out of the automobile and onto the bus where they identified themselves as members of police officers and ordered the passengers on the public transportation vehicle to get off the bus. Kenneth was forced to get into the light-blue vehicle and the vehicle took off. [FN34] That December 16, 1993 was the last day that Kenneth Ney Anzualdo Castro was seen alive. [FN35] Since that date, his family has never heard anything about him and his whereabouts.

[FN32] Cf. statement of Marly Arleny Anzualdo Castro before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao of January 14, 1994 (records of evidence, volume V, appendix 11 to the application, page 1732) and statement of Felix Vicente Anzualdo Vicuña before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao of January 17, 1994 (record of evidence, volume V, appendix 11 to the application, page 1735).

[FN33] Cf. Statement of Marly Arleny Anzualdo Castro rendered at the public hearing held before the Inter-American Court on April 2, 2009; testimony rendered by Felix Vicente Anzualdo Vicuña before the Truth and Reconciliation Commission on June 22, 2002 (record of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2757); statement of Marly Arleny Anzualdo Castro rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1732-1733); statement of Santiago Cristóbal Alvarado Santos rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1729-1731); statement of Milagros Juana Olivares Huapaya rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on February 10, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1743-1744), and statement of Yheimi Torres Tuanama rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on February 11, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1745 to 1747).

[FN34] Cf. affidavit of Santiago Cristobal Alvarado Santos of March 17, 2009 (record of evidence, volume XI, pages 4368- 4370); statement of Santiago Cristobal Alvarado Santos rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1729-1731); statement rendered by Marly Arlene Anzualdo Castro before the public hearing held before the Inter-American Court on April 2, 2009; statement of Marly Arlene Anzualdo Castro

rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, page 1733) and testimony rendered by Felix Vicente Anzualdo Vicuña before the Truth and Reconciliation Commission on June 22, 2002 (record of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2757).
[FN35] Cf. statement of Marly Arleny Anzualdo Castro rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, page 1732); statement of Felix Vicente Anzualdo Vicuña before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, of January 17, 1994 (record of evidence, volume V, appendix 11 to the application, page 1735); statement of Milagros Juana Olivares Huapaya rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, of February 10, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1743-1744) and statement of Yheimi Torres Tuanama rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao of February 11, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1745 to 1747).
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35. Moreover, the State has contested the fact that the disappearance of Mr. Anzualdo Castro is attributable to it, indicating that the disappearance was committed by Sendero Luminoso, based on the fact that he was involved with said group and it mentioned some documents to base this statement [FN36]. Specifically, the State mentioned that during the '90s, at the Economy School of Universidad Técnica del Callao, "activities were carried out by a group of students affiliated with the terrorist […] group Sendero Luminoso." It expressed that "the key to this issue is Martin Roca Casas, leader of the Affiliated Center and personal friend of Kenneth Ney Anzualdo Castro, who […] [would have] turned into an informant (in writing) of those who belonged to and conducted subversive activities inside the university" Finally, the State offered the statement rendered by a senior officer of the Peruvian Army before the Office of the Third Supra-Provincial Prosecutor, in which he denies any participation in the disappearance of Mr. Anzualdo Castro. [FN37]

[FN36] The State also made reference to report N° 028-DAN-DIVICOTE-2-DINCOTE of June 16, 1997 of DINCOTE about the raid conducted on October 8, 1991 by the National Police into the residence of Mr. Félix Anzualdo Vicuña, in which it was mentioned that "in such raid, [four] leaders of [said] terrorist organization were arrested", including, Mr. Anzualdo Castro, "and during such search, the police found explosives, ammunitions, manuscripts of a subversive nature." It indicated that "many of those" people were later on convicted of terrorism and aggravated murder. In addition, the State referred to the police report N°211-BREDET-DIRCOTE of October 21 that would describe the arrest of several people "as summonsed", including Mr. Anzualdo. The State considered it is "important to make a comparison of the background and life of Kenneth Ney Anzualdo Castro and Martin Roca Casas", to conclude that they were both "informants" for the security forces. In addition, it related an "order" issued by Abimael Guzmán, the then leader of Sendero Luminoso, about the need to execute the "cowards and deserters", with the responsibility for the disappearance of Mr. Anzualdo to such group. Lastly, based on five publications made in the Peruvian newspapers of 1991, the State claims

that Mr. Anzualdo would have participated in criminal acts committed by members of Sendero Luminoso, even the murder of the former Ministry of Labor and another attack. It pointed out that the Truth and Reconciliation Commission and the Ombudsman accuse said terrorist group of being the main perpetrator of the murders and disappearances of Peruvian people.
[FN37] Cf. Statement of the Chief of the Peruvian Army, Hernán Roberto Sánchez Valdivia rendered before the Office of the Third Supra-Provincial Prosecutor on June 15, 2007 (record of evidence, Volume IX, appendix 14 to the brief of response to the application, pages 3612 - 3617).
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36. In the first place, the Court considers it is important to repeat, as in previous cases, [FN38] that this Court is not a criminal tribunal before which an individual's responsibility for crimes committed may be debated. This applies to the instant case, in the sense that the case is not concerned with Mr. Kenneth Ney Anzualdo Castro's innocence or guilt in certain facts attributed to him by the State or the alleged connection with the terrorist group Sendero Luminoso, but with the determination of the compliance with the State's obligation to respect and guarantee the rights enshrined in the American Convention and the responsibility of the State for the facts at dispute. The Tribunal limits the instant Judgment to this.

[FN38] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 134; Case of Suárez Rosero V. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 37. See also, Case of Yvon Neptune V. Haití. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 37; Case of Boyce et al. V. Barbados. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C Nº 169, footnote 37 and case of Zambrano Vélez et al. V. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 93.
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37. Within the framework of the Convention, the international responsibility of States occurs when the State violates the general obligations, erga omnes obligations, to respect and ensure respect- guarantee- for the protection norms and ensure the effectiveness of the rights enshrined under any situation, to all persons, as stipulated in Articles 1(1) and 2 of said treaty. From these general obligations derive special duties, which can be ascertained based on the particular needs of protection of the legal person, considering his personal condition or the specific situation in which he is. [FN39] In this way, any acts or omissions of any of the State Party's powers or organs, under International Law, that violate the human rights enshrined in the American Convention constitute a fact attributable to the State that compromises its international responsibility, under the terms stipulated in the Convention and pursuant to general International Law. [FN40]

[FN39] Cf. Case of the "Mapiripán Massacre" V. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005, Series C No. 134, para. 111 and 113; Case of Perozo et al. V. Venezuela, supra note 6, para. 298; Case of Ríos et al. V. Venezuela, supra note 6, para. 118. See also, Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 164-168; and

Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18 of September 17, 2003, Series A N.18, para. 140.
[FN40] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 164, 169, 170 and 173; Case of the "White Van" (Paniagua Morales et al.). Merits, supra note 12, para. 91; Case of Kawas Fernández V. Honduras, supra note 14, para. 73; Case of Perozo et al. V. Venezuela, supra note 6, para. 130.
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38. Most of the State's answer to the application deals with doctrinal references about the valid requirements for the production of evidence in order to sustain that for the Court to validly use it, certain criteria must be considered, even though it acknowledged that it is possible to establish the international responsibility of a State, as well as the attribution of a forced disappearance to state agents, based on evidentiary items. In this regard, the Court refers to its case-law regarding circumstantial evidence, indicia, and presumptions, [FN41] which are especially important when dealing with forced disappearance cases, "because this type of repression is characterized by an attempt to suppress all information about the abduction, the whereabouts and fate of the victim." [FN42] The Court takes into account this criterion to determine the facts and not the criteria mentioned by the State that corresponds to domestic criminal law.

[FN41] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 130; Case of Escher et al. V. Brazil, supra note 6, para. 127; Case of Perozo et al. V. Venezuela, Supra note 6, para. 112; and Case of Ríos et al. V. Venezuela, Supra note 6, para. 101.
[FN42] Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 131. See also, Case of Blake V. Guatemala. Merits. Judgment of January 24, 1998. Series C Nº 36 para. 47, 49 and 51; Case of Bámaca Velásquez V. Guatemala. Merits. Judgment of November 25, 2000. Series C Nº. 70, para. 130 and 131; and Case of Kawas Fernández V. Honduras, supra note 14, para. 95.
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39. The Court notes that there is no controversy about the disappearance of Mr. Anzualdo Castro, but over who is responsible for it. In the first hypothesis, the Commission and the representatives allege that the disappearance is attributable to agents of the SIE, whereas, in a second hypothesis, the State attributes the disappearance to members of the group Sendero Luminoso.

40. In this regard, part of the defense of the State is based on the fact that the testimony of a former agent of the SIE- that would be the key to the disclosure of a series of facts linked to the disappearance- has not been furnished before the judicial authorities, but that it only appears in the journalistic research published in the book "Muerte en el Pentagonito"; therefore, it would be ineffective before a court given the lack of legal basis or official procedures. The Tribunal notes that said statement was or should have been at its disposal had the State acted with the diligence required in the investigations. [FN43] Therefore, the Court notes that the Ad Hoc State's Attorney Office, a state judicial organ, mostly based on the investigation contained in said book to file the amendment to request for extradition of former president Fujimori, in relation to the

case of Mr. Anzualdo Castro. [FN44] This request was admitted by the First Transitory Chamber in criminal matters of the Supreme Court of Justice. [FN45] Hence, in short, the statement of the former agent of the SIE was, indeed, considered at the domestic level by the highest judicial authorities of Peru. Therefore, the references contained in said journalistic research are not "ineffective" before this judicial instance, as the State claims.

[FN43] In a similar sense, Cf. Case of Neira Alegría et al. v.Perú. Merits. Judgment of January 19, 1995. Series C Nº 20, para. 65.
[FN44] Cf. amendment to request the Active Extradition of the Ad Hoc State's Attorney Office of March 21, 2006 (record of evidence, Volume , Amendment to request the Active Extradition, March 21, 2006 (appendix 16 to the Brief of Pleadings and Motions, records of evidence, Volume VIII, appendix 16 to the Brief of Pleadings and Motions, pages 2918 to 2921).
[FN45] Cf. Final Judgment of the First Transitory Chamber in criminal matters of the Supreme Court of Justice, June 21, 2006 (record of evidence, Volume V, appendix 1 to the Application, pages 1598 -1613).

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41. Moreover, to sustain its own version of the facts, the State based the evidence on the detention of Mr. Anzualdo and other people of October 1991; on his friendship with Martín Javier Roca Casas and on the context of disappearances perpetrated by Sendero Luminoso at that time (supra paras. 33 and 35).

42. In view of the evidentiary value that the press clippings have in a proceeding before this Court (supra para. 25), it is inappropriate to give to such press clippings the evidentiary weight the State claims. Neither it is determining the friendship that existed between Kenneth Ney Anzualdo Castro and Martin Javier Roca Casas, mentioned by the State, since the Tribunal cannot assume that, in view of that relationship and that they were friends or fellow students, the former was an informant of the security forces or that he was disappeared by Sendero Luminoso.

43. Apart from the foregoing, the Court considers that the version of the facts presented by the State during this proceeding is inconsistent with what the State's judicial organs sustained in the processing of the request for extradition of former President Fujimori. It seems appropriate to note that the Ad Hoc State's Attorney Office, in the cases of Fujimori- Montesinos, considered that, according to the Logbook 1 of the basement of the SIE, a person identified as "detainee 5C"- that corresponded to Kenneth Ney Anzualdo Castro- was admitted to the basement in the night of December 16, 1993, at 10:10 P.M.; and that it would be possible to establish, from the analysis of the Logbooks 1 and 2 of the basements of SIE, that detainee 5C would have been held in said basements from December 16, 1993 to December 30, 1993 and that he would have been daily visited by an Army officer. After December 30, 1993, detainee 5C does not appear any longer in the entries of Logbooks 1 and 2 of the basements of the SIE and there is no specification as to the exit reason or final destination. According to the abovementioned Ad Hoc State's Attorney Office, considering the non-return exit of Anzualdo Castro from the entries of the SIE, it is presumed that he was eliminated and his body later cremated in the incinerators installed in the basements of SIE. [FN46]

[FN46] Cf. amendment to request the Active Extradition of the Ad Hoc State's Attorney Office of March 21, 2006 (record of evidence, Volume VIII, appendix 16 to the Brief of Pleadings and Motions, page 2920). See also, affidavit rendered by Victor Manuel Quinteros Marquina on March 16, 2009 (records of evidence, volume XI, pages 4350-4362).

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44. In the report forwarded to the State's Attorney of the Supreme Court of Chile, in relation to said request for extradition, it is indicated that the information above mentioned allows concluding that there are manifold, serious, and consistent indications, from which it is possible to conclude for certain that Kenneth Anzualdo Castro was detained by agents of the State. [FN47] Said amendment to the request of the State's Attorney, as well as its admission by the Supreme Court, considers as a fact that the forced disappearance is attributable to state agents, including to high-ranking authorities at that time. The Court considers that, even though the statements made by the State were expressed in different procedures and places, on the one hand, in the extradition proceeding of former President Fujimori and on the other hand, in the proceeding before this Tribunal, there is a contradiction that disqualifies the position expressed by the State.

[FN47] Cf. Report of the State's Attorney Office of the Supreme Court of Chile in relation to the request for extradition of the Peruvian citizen Alberto Fujimori, of June 7, 2007 (record of evidence, volume VIII, appendix 17 to the Brief of Pleadings and Motions, page 2979).

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45. Lastly, the State indicated during the hearing that the hypothesis of the disappearance of Mr. Anzualdo Castro by Sendero Luminoso "is not under investigation in the criminal proceeding that is currently conducted." This would prove, contrary to what the State seeks, that the own statements of the State regarding such connection are not based on findings made at the domestic level by judicial or investigation authorities, courts or investigative authorities, which invalidates the State's position.

46. It is also relevant that Mr. Anzualdo was made disappeared two days before he was due to go to the State's Attorney Office to render a statement about the circumstances of the disappearance of Martin Roca Casas. This is why, a few days before, Mr. Anzualdo Castro had expressed his concern about it in the offices of APRODEH. [FN48]

[FN48] Cf. statement of Ruben Dario Trujillo Mejia before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, of January 24, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1740-1742); affidavit of Javier Roca Obregón, of March 16, 2009 (record of evidence, volume XI, pages 4363- 4367) and statement rendered by Félix Vicente Anzualdo Vicuña at the public hearing held before the Inter-American Court on April 2, 2009.

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47. The Court also notes that the disappearance of Kenneth Ney Anzualdo Castro clearly followed the modus operandi of the practice of forced disappearances of the time, in particular the ones perpetrated against university students.

48. This practice constituted, according to the report of the Truth and Reconciliation Commission (hereinafter, "CVR"), one of the steps in the procedure used as part of the counter-subversion plan implemented systematically by state agents between 1988 and 1993, in great part of the national territory and that became more important when the Executive power decided that the Armed Forced would replace the Police Forces in the internal control and combat of subversion. The members of the Armed Forces are held responsible for most of the victims of this practice [FN49]. The general profile of the victims of forced disappearances at the hands of state agents is groups of relatively younger and more educated people than the rest of the community, [FN50] especially in comparison to the victims attributed to Sendero Luminoso. Moreover, even though the peasants constitute the larger group among the victims of forced disappearance, this practice was proportionally most used against university students. [FN51] The Court notes that the CVR called upon the father of Kenneth Anzualdo to declare and he rendered a statement at a hearing together with the parents of another two disappeared persons, given the fact that they are cases that represent what happened to a great number of students. [FN52]

[FN49] Cf. Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 79-81, available at http://www.cverdad.org.pe/ifinal/index.php
[FN50] Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 84-85, available at http://www.cverdad.org.pe/ifinal/index.php
[FN51] Cf. Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 103, available at http://www.cverdad.org.pe/ifinal/index.php. See also, Case of Castillo Páez V. Perú. Merits. Judgment of November 3, 1997. Series C No. 34, para. 42.
[FN52] CVR, public hearings in Lima, Case 26, Fourth Sessions, June 22, 2002 (record of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2755).

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49. The modus operandi used in the forced disappearances had the following characteristics or stages: "selection of the victim, arrest of the individual, holding the victim at a detention site, possible transfer to another detention center, interrogation, torture and processing of the information obtained, the decision to eliminate the victim, the physical elimination, the concealment of the victims' remains [and] the use of the State's resources." [FN53] The common denominator throughout the entire process would have been "the denial of the very fact of the arrest and the withholding of any information whatsoever about what was happening to the person under arrest." Consequently, the person would be entering an established circuit of clandestine detention, from which he or she would be very lucky to get out alive." [FN54] The complex organization and logistics associated with the practice of forced disappearance called for the use of State's resources and means. [FN55]

[FN53] Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 84, available at http://www.cverdad.org.pe/ifinal/index.php
[FN54] Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 84, available at http://www.cverdad.org.pe/ifinal/index.php
[FN55] Cf. Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 99-100, available at http://www.cverdad.org.pe/ifinal/index.php
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50. Based on the foregoing reasons, the Court considers proven that state agents, including the SIE agents, deprived of liberty or abducted Mr. Anzualdo Castro on December 16, 1993, took him to the basements of SIE, where he was confined during an uncertain period of time, and whose whereabouts are unknown up to the present. The Court shall now determine the legal consequences of these facts in the following chapter.

B. Forced disappearance as a multiple violation of human rights

51. In the application, the Commission made a separate analysis of each one of the rights that it considers to be violated in this case. According to the representatives, the multiple nature of the violation in cases of forced disappearances implies that, "before a situation of arbitrary and illegal detention attributable to State agents or other people acting with the consent of the State, in which there is denial and lack of information and where the victims are deprived of their right to recourse to a competent court to claim for the detention, the violation of [several] right[s] is immediately established", which makes unnecessary to analyze the specific elements that have been violated in relation to each right. Hence, the representatives presented an overall analysis of the violations alleged.

52. In particular, the Commission asserted that the State is responsible for the violation of the right to personal liberty, enshrined in Articles 7(2) and 7(3) of the Convention in connection with Article 1(1) therein, to the detriment of Kenneth Ney Anzualdo Castro, based on the circumstances and methods used to deprive him from his liberty "in other words, in a manner contrary to the grounds and circumstances recognized in the Constitution and in criminal procedural law in force in Peru at the time of the events." It alleged that Mr. Anzualdo was arrested without the order of a competent authority so that he might be taken before a judge, but in order to take him to a clandestine detention center without any institutional control. The Commission also mentioned that the State also violated Articles 7(5) and 7(6) of the Convention by failing to allow him the possibility to seek by his own means a prompt and effective recourse to decide the legality of his detention. The representatives alleged that the forced disappearance of Mr. Anzualdo entailed an automatic violation of the right to personal liberty, that is, of Article 7 of the American Convention per se, a rule that needs to be construed in light of Article XI of the ICFDP, insofar as his abduction followed by his relocation to the clandestine detention centers of SIE sought to impede that the next-of-kin as well as the competent authorities could locate him and prevent his disappearance. The State did not specifically refer to these allegations.

53. Apart from the foregoing, the representatives requested the Court to declare that the State violated "Articles 7(6) and 25 of the [American Convention] and XI of the ICFDP, for failing to comply with Article 2 of the [American Convention]" given the fact that "the judge who

examined the writ of habeas corpus filed by Mr. Anzualdo Vicuña on behalf of his son, Kenneth, applied the law in a restrictive way, proving the remedy to be ineffective." The State, when mentioning the "formalized, processed and closed procedures" of the instant case, referred to the inadmissibility of the habeas corpus petition filed by Mr. Anzualdo Vicuña, which, pursuant to Article 6(3) of Act 23.506, may only be admissible if the plaintiff opts to institute proceedings "in the general jurisdiction." Likewise, the State pointed out that Kenneth's father filed an appeal against such decision, which came to be "unfavorable." Finally, the State concluded that "[a]ll those complaints filed with the different instances, that is, with the police, the prosecutor and the court, demonstrate the respect for the right to an effective judicial oversight, respect for due process and other rights enshrined in [Article] 139 of the 1993 Political Constitution, inasmuch as up to date the investigative stage has not ended."

54. Moreover, the Commission and the representatives claimed that the State is responsible for the violation of the right to humane integrity of Kenneth Anzualdo, under the terms of Article 5 of the Convention in relation to Article 1(1) therein, and they indicated that the deprivation of liberty caused him moral and mental distress. They considered that it is reasonable to assume that Kenneth was violently interrogated and tortured during the period of time he remained in the basements, according to said modus operandi. The State did not specifically refer to these allegations.

55. Furthermore, the Commission and the representatives alleged that the State failed to comply with its obligation to respect and guarantee the right to life of Kenneth Ney Anzualdo Castro, in violation of Article 4(1) of the American Convention in relation to Article 1(1) therein. Specially, they considered that the circumstances in which Kenneth was detained, the lack of prompt investigations into the facts, the lapse of time without information about the whereabouts of Mr. Anzualdo Castro, the knowledge about said systematic and widespread practices at the time of the events and the criminal order for trial to commence, suggest that the alleged victim was deprived of life in violation of the duty to respect the right to life. Furthermore, they pointed out, considering that he was under the State's custody after being abducted by state agents, that the State should have offered, in its role of guarantor, explanations about the whereabouts of the victim and should have conducted a prompt investigation into the facts, which the State did not do, failing to comply with its obligation to guarantee the right to life. The Commission, in addition, alleged that "it is valid and logical to conclude that the victim was deprived of life by means of an extra-judicial execution perpetrated by State agents" therefore, his killing is not an isolated incident but "an extrajudicial disappearance" (sic) in the context of said pattern. The State did not specifically refer to these allegations.

56. In turn, the Commission alleged the violation of the right to juridical personality of Mr. Anzualdo Castro, embodied in Article 3 of the American Convention. It held that "it is correct and necessary to include an analysis of the alleged violation of Article 3 of the Convention in the [...] concept of multiple violations of human rights to which a case of forced disappearance gives rise." The Commission based its position on the idea that the juridical personality is a fundamental requirement for the enjoyment of all basic freedoms, inasmuch as this right grants the individual the right to exercise and enjoy rights; the capacity to take on obligations and standing. According to the Commission, the precise object of forced disappearance is to remove the individual from his due protection and "to operate outside the law." Therefore, the

Commission found that through the State's refusal to recognize that Mr. Anzualdo Castro was in its custody and not informing about his situation or whereabouts, the State created a "legal vacuum" that eliminated the juridical personality of the alleged victim

57. The representatives, moreover, agreed with this argument of the Commission. They alleged that this "limbo" regarding the legal condition of the individual occurs by means of the forced disappearance as a result of the uncertainty about the life or death of the victim and that these effects are produced on third parties, for example, in inheritance issues, property and labor rights. They recalled that in Peru there is a law that governs the possibility of requesting the declaration of absence by forced disappearance, in order to "provide the next-of-kin of the disappeared person […] the necessary instruments to have access to the recognition of their rights", [FN56] by means of the legal declaration of disappearance, which has the same effects that the legal declaration of presumption of death. This domestic procedure confirms such "legal limbo."

[FN56] Section 2 of Act 28.413 of November 24, 2004.

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58. Finally, the Commission and the representatives alleged that the State is responsible for the violation of the right to humane treatment of the next-of-kin of Mr. Anzualdo Castro, as a direct consequence of the illegal and arbitrary deprivation of liberty of the victim and the disregard for and uncertainty about his whereabouts, coupled with the lack of results of the steps taken by the next-of-kin, the lack of a diligent investigation, prosecution and punishment of the perpetrators and instigators of the disappearance. The representatives alleged that the next-of-kin must be considered victims of cruel, inhumane and degrading treatment. The State did not present arguments in this regard, though in the final arguments, in order to debate the requests for reparations, it indicated that "there is no causal link" between the disappearance and the onset of the cancer illness of Mrs. Isabel Castro Cachay de Anzualdo."

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59. The Court has verified the strengthening of a perception of the international community and, in particular, the Inter-American system, that recognizes the gravity and the continuing or permanent and autonomous nature of the crime of forced disappearance of persons. In its constant case-law on this type of cases, the Court has reiterated that the forced disappearance of persons constitutes a multiple violation of several rights protected by the American Convention and that it places the victim in a state of complete defenselessness, giving rise to other related violations, particularly serious when framed within a systematic pattern or practice applied or consented by the State. Therefore, it constitutes a serious human rights violation, given the particular gravity of the offenses and the nature of the rights infringed, [FN57] which involves a flagrant disavowal of the essential principles on which the inter-American system is based [FN58] and the prohibition thereof has attained the status of jus cogens. [FN59]

[FN57] CONSIDERING that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights. Inter-American Convention on Forced Disappearance of Persons, Preamble.
[FN58] Cf. Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 100-106; and Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, para. 118 and Case of La Cantuta V. Peru. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 115.
[FN59] Cf. Case of Goiburú el al V. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, para. 84; Case of Tiu Tojín V. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 91; and Case of La Cantuta V. Perú, supra note 58, para. 157.
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60. Upon the ratification of the ICFDP, as with the case of Peru, State Parties undertake, in light of Article I(a) of said treaty, not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees. The need to integrally consider the phenomenon of forced disappearance as an autonomous and continuous or permanent crime, with their multiple aspects intricately interrelated and related violations, can be deduced not only from the typical definition of Article III of the ICFDP, [FN60] the travaux préparatoires for this instrument [FN61], its preamble and set of rules, but from other definitions contained in different international instruments, [FN62] that establish as concurring and constituting elements of the crime of forced disappearance: a) deprivation of liberty; b) direct involvement of governmental officials or by acquiescence, and c) refusal to acknowledge the deprivation of liberty and to disclose the fate and whereabouts of the person concerned. [FN63]

[FN60] The ICFDP provides that “forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantee[;] this offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.”
[FN61] Cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This offense “will be considered continuing or permanent as long as the whereabouts or the fate of the victim has not been established.” (OEA/CP-CAJP, Report of the President of the Working Group responsible for examining the draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).
[FN62] Cf. United Nations Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, General Observations to Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, of January 15, 1996. (E/CN.

4/1996/38), para. 55 and Article 2 of the International Convention for the Protection of All People from Enforced Disappearance.
[FN63] Cf. Case of Gómez Palomino V. Perú. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C Nº. 136, para. 97; and Case of Ticona Estrada V. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 55; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 110.
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61. The case- law of the organs of the United Nations, [FN64] as well as the case –law of the European Human Rights System, [FN65] agrees with this characterization, and also the several Constitutional Courts of the American States. [FN66] By the same token, the national tribunals of the defendant State, for example, the National Criminal Chamber of Peru, have also decided cases similarly. [FN67] Moreover, the Court notes, in view of the typical nature of forced disappearance, by means of which the victim is seriously vulnerable, that other rights might be violated, which is more evident in a systematic pattern of human rights violations. [FN68]

[FN64] Cf. United States Human Rights Committee, case of Ivan Somers v. Hungary, Communication No. 566/1993, 57º period of sessions, CCPR/C/57/D/566/1993 (1996), July 23, 1996, para. 6.3; case of E. and A.K. v. Hungary, Communication No. 520/1992, 50º period of sessions, CCPR/C/50/D/520/1992 (1994), May 5, 1994, para. 6.4, and case of Solorzano v. Venezuela, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983 (1986), March 26, 1986, para. 5.6.
[FN65] Cf. Kurt v. Turkey, App. No. 24276/94, Eur. Ct. H.R. (1998); Cakici v. Turkey, Eur. Ct. H.R. (1999); Ertak v. Turkey, Eur. Ct. H.R. (2000); Timurtas v. Turkey, Eur. Ct. H.R. (2000); Tas v. Turkey, Eur. Ct. H.R. (2000); Cyprus v. Turkey, Application No. 25781/94, Eur. Ct. H.R. (2001), para. 136, 150 and 158.
[FN66] Cf. Case of Marco Antonio Monasterios Pérez, Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007 (which declare the multiple-offensive and permanent nature of the crime of forced disappearance); Case of Jesús Piedra Ibarra, Supreme Court of Justice of Mexico, Judgment of November 5, 2003 (sustained that forced disappearances are continuous crimes and the statutory limits must run as of the finding of the mortal remains); Case of Caravana, Criminal Chamber of the Supreme Court of Chile, Judgment of July 20, 1999; Case of the withdrawal of privileges of Pinochet, Plenum of the Supreme Court of Chile, judgment of August 8, 2000; Case of Sandoval, Appellate Court of Santiago Chile, Judgment of January 4, 2004 (everyone declared that the crime of forced disappearance is a continuous crime against humanity, not subjected to statutory limitations and amnesty laws); Case of Vitela et al., Federal Criminal and Correctional Court of Appeals of Argentina, judgment of September 9, 1999 (which declared that forced disappearances are continuous crimes against humanity); Case of José Carlos Trujillo, Constitutional Tribunal of Bolivia, judgment of November 12, 2001 (in the same sense); Case of Castillo Páez, Constitutional Tribunal of Peru, judgment of March 18, 2004 (which determined, based on what the Inter-American Court ordered in the same case, that forced disappearance is a permanent crime until the whereabouts of the victim is established); Case of Juan Carlos Blanco and Case of Gavasso et al., Supreme Court of Uruguay, judgment of October 18, 2002 and judgment of April

17, 2002, respectively (in a similar sense). The foregoing cases are quoted in the case of Heliodoro Portugal V. Panama, supra note 58, para. 111.
[FN67] Cf. Judgment of March 26, 2006, National Criminal Chamber of Peru for the crime against liberty- abduction of Ernesto Rafael Castillo Páez. In this sense, after almost sixteen years since the occurrence of the events and almost four since the criminal proceeding was instituted against the perpetrators, the National Criminal Chamber of Peru delivered a condemnatory judgment against them for the crime of forced disappearance, in light of the judgment of the Inter-American Court of Human Rights of November 1997. By the same token, judgment of August 10, 2007 of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, case of Monasterios Perez and Marco Antonio.
[FN68] Cf. Case of Ticona Estrada V. Bolivia, supra note 63, para. 60.
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62. In this regard, the Court has held that the general obligation to guarantee the human rights recognized in the Convention, enshrined in Article 1(1) therein, can be fulfilled in several ways, depending on the right that the State must guarantee and the particular needs for protection. [FN69] This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. [FN70] As part of that obligation, the State has a legal duty "to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." [FN71]

[FN69] Cf. Case of the "Maripirán Massacre" V. Colombia, supra nota 39, paras. 111 and 113; Case of Perozo et al. V. Venezuela, supra note 6, para. 298; Case of Ríos et al. V. Venezuela, supra note 6, para. 118.
[FN70] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 166; Case of Kawas Fernández V. Honduras, supra note 14, para. 137; Case of Perozo et al. V. Venezuela, supra note 6, para. 149.
[FN71] Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 174.
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63. In cases of forced disappearances, the denial to know the truth of the facts is the common characteristics to all the stages (infra paras. 118 and 119). One of the central elements for the prevention and elimination of this practice is the adoption of effective measures to prevent such disappearance or, if applicable, when there is a suspect that a person has been made disappeared, to put an end to that situation immediately. In this sense, this duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights. [FN72] Hence, the deprivation of liberty in legally recognized centers and the existence of detainees' records constitute fundamental safeguards, inter alia, against forced disappearances. In the opposite sense, the implementation and maintenance of clandestine detention centers constitute per se a breach of the obligation to guarantee insofar as such situation directly affects the rights to personal liberty, humane integrity and life.

[FN72] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 175.

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64. That, given that one of the goals of such practice is precisely to impede the exercise of legal remedies and the pertinent procedural guarantees, whenever a person is subject to an abduction, detention or any form of deprivation of liberty for the purposes of his or her forced disappearance, if the victim itself cannot have access to available resources, it is crucial that the next—of-kin or other people related to the victim can have access to expeditious and effective judicial procedures and recourse as a means of determining the whereabouts or health condition of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom. [FN73]

[FN73] Cf. in a similar sense, the obligation contained in Article X of the Inter-American on Forced Disappearance of Persons.

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65. In short, whenever there is a reason [FN74] to belief that a person has been subjected to forced disappearance, an investigation must be conducted. This obligation is independent from the filing of a complaint, since in cases of forced disappearance, International Law and the general duty to guarantee, to which Peru is bound, imposes upon States the obligation to investigate the case ex officio, without delay and in a serious, impartial and effective way. This is a fundamental and conditioning element for the protection of certain rights that are otherwise affected or annulled by those situations, such as the right to life, personal liberty and personal integrity. [FN75] Without detriment to the foregoing, in any case, every state authority, public or private officer who is aware of acts purported to forcibly disappear persons, shall immediately report them.

[FN74] Cf. Article 12(2) of the International Convention for the Protection of All Persons from Enforced Disappearance and Article 13 of the Declaration on the Protection of all Persons from Enforced Disappearance. Moreover, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on June 25, 1993, established that: “it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators” (para. 62).

[FN75] Cf. Case of the Pueblo Bello Massacre V. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 145; Case of Kawas Fernández V. Honduras, supra note 14, para. 75; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 115.

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66. Finally, following this line of thought and as part of its obligation to establish an appropriate legal framework so that the investigation is effective, States must, in the first place, classify the forced disappearance of persons as an autonomous crime in their domestic

legislation, on the understanding that the criminal prosecution can be an essential channel to prevent future human rights violations. Said classification must include the minimum elements established in specific international instruments, universal as well as Inter-American, for the protection of persons against forced disappearances [FN76] (infra paras. 164 to 167).

[FN76] Case of Gómez Palomino V. Peru, supra note 63, para. 96 and 97; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 188 and 189; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 92.

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67. As a result of the foregoing, this Tribunal has held that "the analysis of a possible forced disappearance should not be approached in an isolated, divided and segmented way, based only on the detention or possible torture or risk to lose one's life, but on the set of facts presented in the case brought to the Court's attention." [FN77] In this way, the comprehensive processing of forced disappearance as a complex form of violation of human rights has led this Court to analyze the violation of several rights enshrined in the Convention as a whole. [FN78] Thus, this analysis is in keeping with the continuing or permanent nature of this phenomenon and the need to consider the context in which the violations occurred, examine their effects over time and consider their consequences as a whole, [FN79] taking into account the corpus juris of protection, at the Inter-American as well as the international level.

[FN77] Cf. Case of Heliodoro Portugal V. Panamá, supra note 58, para. 112 and Case of Ticona Estrada V. Bolivia, supra note 63, para. 56.

[FN78] Cf. Case of Velásquez Rodríguez V. Honduras. Merits. Judgment of July 29, 1988, series C N°4; case of Godinez Cruz V. Honduras. Merits. Judgment of January 20, 1989, series C N° 5; case of Caballero Delgado and Santana V. Colombia. Merits. Judgment of December 8, 1995, series C N° 22; Case of Benavidez Cevallos V. Ecuador. Merits, Reparations and Costs. Judgment of June 19, 1998. Series C N° 38; Case of Del Caracazo V. Venezuela. Merits. Judgment of November 11, 1999. Series C N° 58; case of Trujillo Oroza V. Bolivia. Merits. Judgment of January 26, 2000. Series C N° 64. Case of Molina Theissen V. Guatemala. Merits. Judgment of May 4, 2004. Series C N° 106. Case of the 19 Tradesmen V. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C Nº 109; Case of the "Mapiripán Massacre" V. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C Nº 134; Case of Blanco Romero et al. V. Guatemala. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C Nº 138. Case of the Pueblo Bello Massacre V. Colombia. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C Nº 140. Case of Goiburú et al. V. Paraguay. Merits, Reparations and Costs. Judgment of September 22, 2006. Series C N° 153. Case of La Cantuta V. Peru. supra note 58; case of Tiu Tojín V. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C Nº 190; Case of Ticona Estrada V. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191.

[FN79] Cf. Case of Goiburú et al. V. Paraguay, supra note 59, para. 85.

B.1 Rights to personal liberty, humane treatment, life and juridical personality

68. The Court has already determined that Mr. Anzualdo Castro was deprived of liberty or abducted by state agents on his way home from university (supra paras. 34 and 50). In this regard, this Tribunal has considered that this type of deprivation of liberty of the individual must only be understood as the constitution of a complex violation that continues in time until the fate or whereabouts of the alleged victim is known, [FN80] therefore, it is not necessary to determine whether or not the alleged victim was informed of the reasons for his detention, whether or not said detention was effected regardless of the motives and conditions established in the Peruvian legislation in force at the time of the events or whether the acts of the detention were unreasonable, unpredictable or disproportionate. [FN81]

[FN80] Cf. Case of Heliodoro Portugal V. Panamá, supra note 58, para. 112 and Case of Ticona Estrada V. Bolivia, supra note 63, para. 56.
[FN81] Cf. in similar sense, Case of La Cantuta V. Perú, supra note 58, para. 109.

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69. According to the proven facts, after Mr. Anzualdo was deprived of liberty, he was taken to the basements of SIE, a clandestine detention center (supra para. 50), which is contrary to the obligation of State Parties to held every person deprived of liberty in an officially recognized place of detention and be brought before a competent judicial authority without delay, as an effective measure to prevent those facts. [FN82]

[FN82] Cf. Article XI of the Inter-American Convention on Forced Disappearance of Persons.

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70. Considering that on December 16, 1993 Mr. Anzualdo did not return home, his next-of-kin took several actions and steps to try to locate him and find out his whereabouts, before different people and public instances. [FN83] Between December 1993 and July 1994, they sent several letters to public authorities and universities as well as to communication media; [FN84] they also took other investigative steps to try to find out his whereabouts. [FN85]

[FN83] Particularly, they talked to the fellow students of Mr. Anzualdo who have seen him for the last time; they talked to the driver of the bus that he boarded on the night of December 16, 1993, after having gone to the terminal of the number 19 bus line and asked for a list of the vehicles that left between 8 and 9 p.m. at night; they pursued inquiries with various government institutions, including hospitals, morgues, the National Police, DINCOTE [National Office Against Terrorism]; they went to the Office of the Harbor master of Callao, where they were advised to report the incident to the human rights Institutions and gave them the address of APRODEH; and they spoke to members of the Association for Human Rights (APRODEH) and the family of Martín Javier Roca Casas. At that moment, the family learned that Mr. Anzualdo had been in the office of APRODEH to render a statement about the disappearance of Martin Javier Roca Casas. See Testimony of June 22, 2002 rendered by Mr. Felix Vicente Anzualdo

Vicuña before the Truth and Reconciliation Commission (record of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2758); statement rendered by Mr. Felix Vicente Anzualdo Vicuña at the public hearing held before the Inter-American Court on April 2, 2009; statement rendered by Marly Arleny Anzualdo Castro at the public hearing held before the Inter-American Court on April 2, 2009 and Statement of Rubén Dario Trujillo Mejía of January 24, 1994, rendered before the Office of the Fifth Prosecutor for Criminal Matters of Callao (record of evidence, volume V, appendix 11 to the application, pages 1740 to 1742).

[FN84] The next-of-kin of Kenneth Ney Anzualdo Castro sent letters to the President of the Universidad Nacional del Callao; to the Special State's Attorney Office of Public Defense and Human Rights; to the President of the Human Rights Commission of the Congress; the President of the Universidad Nacional del Callao; the Director of "Cora" radio and the Director of Canal 9 [Channel 9]; to the then President of the Republic, Alberto Fujimori; the President of the Constituent Congress; the President of the Peace Council and the Coordinator of the National Registry of Detainees. Cf. complaint for the abduction and disappearance of Kenneth Ney Anzualdo Castro filed with the Special State's Attorney Office of Public Defense and Human Rights, January 5, 1994 (record of evidence, volume V, appendix 25 to the Application pages 1813 to 1814); and letters sent by Mr. Anzualdo Vicuña (record of evidence, volume VIII, appendix 9 to the Brief of Pleadings and Motions, pages 2725 to 2735).

[FN85] Cf. statement rendered by Félix Vicente Anzualdo Vicuña before the public hearing held before the Inter-American Court on April 2, 2009 and testimony rendered by Félix Vicente Anzualdo Vicuña before the CVR on June 22, 2002 (record of evidence, volume VIII, appendix 11 to the brief of pleadings and motions, page 2758).

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71. Among the actions taken, on February 8, 1994, Mr. Felix Anzualdo Vicuña filed for a writ of habeas corpus against the General of the Joint Chief of Staff of the Army and the Commander-in-Chief of the Navy before the Sixth Criminal Court in and for Lima, in order to identify the place where his son was held in custody since December 16, 1993. [FN86] Three days later, the Sixth Criminal Court in and for Lima declared the inadmissibility of the writ of habeas corpus, based on that "it [was] not possible to determine evidence that directly point to the defendants as responsible" for the disappearance. Likewise, on application of Article 6(c) of Habeas Corpus and Amparo Act 23.506 of December 8, 1982, and given the fact that the criminal complaint previously filed by the plaintiff with the Fifth Criminal State's Attorney Office of Callao was pending resolution, the court established that "actions for protection shall not be admissible when the injured party opts to institute proceedings in the general jurisdiction." [FN87] On February 22, 1994, Mr. Anzualdo Vicuña filed a motion to appeal against such decision. [FN88] On the next day, the appeal was rejected on the grounds that the allowed time period had expired. [FN89]

[FN86] Cf. writ of habeas corpus filed by Félix Vicente Anzualdo Vicuña on February 8, 1994 (record of evidence, volume V, appendix 7 to the application, pages 1707-1708).

[FN87] Cf. Decision delivered by the Sixth Criminal Court in and for Lima in the court file Nº 02-94, of February 11, 1994 (record of evidence, volume V, appendix 7 to the application, pages 1711 to 1713).

[FN88] Cf. motion to appeal filed by Félix Vicente Anzualdo Vicuña on February 22, 1994 (record of evidence, volume V, appendix 7 to the application, pages 1714).
[FN89] Cf. court order issued by the Sixth Criminal Court in and for Lima in the court file Nº 02-94, of February 23, 1994 (record of evidence, volume V, appendix 7 to the application, page 1715).
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72. In cases concerning deprivation of liberty, such as with the instant case, the habeas corpus remedy constitutes, among the indispensable judicial guarantees, the most suitable means to ensure freedom, oversee the respect for life and personal integrity of the individual, to ensure that the detainee is brought before the court in charge of verifying the legality of the detention, as well as to avoid disappearances or uncertainty about detention centers, and to protect the individual from torture or other forms of cruel, inhumane or degrading treatment. [FN90] These criteria are expressly embodied in Articles X and XI of the ICFDP, specifically when referring to forced disappearance of people.

[FN90] Cf. Case of Neira Alegría et al. V. Perú. Supra note 43 para. 82; Case of La Cantuta V. Peru, supra note 58, para. 111; Case of the Serrano Cruz Sisters V. El Salvador. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 79. See also Habeas corpus in Emergency Situations (Art. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987, Series A Nº.8, para. 35.
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73. During the time the writ of habeas corpus was filed to determine the whereabouts of Mr. Anzualdo Castro, the set of rules governing this remedy established that such remedy was inadmissible "when "the injured party opts to institute proceedings in the general jurisdiction." [FN91] Consequently, for a situation like the one of the instant case, this provision disregarded the fact that both procedures have different purposes and contemplated the consequence that the writ of habeas corpus was impracticable for protection purposes it was supposed to fulfill and therefore, rendered the analysis on the lawfulness of the detention unrealistic.

[FN91] Section 6.3) of Habeas Corpus and Amparo Act 23.506 of December 8, 1982.
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74. Under Article 7(6) of the Convention, this protection mechanism "may not be restricted or abolished"; therefore, said ground for inadmissibility is in total breach of the conventional provision. Likewise, the decision that denied the habeas corpus was based on the absence of sufficient evidence to prove the wrongdoing of the state agents considered to be responsible for the disappearance of Mr. Anzualdo, that is, it made the remedy dependent on the criminal investigation, which, at the end, turned out to be totally ineffective to determine his whereabouts (infra paras. 128-140). This proves a clear confusion regarding the purpose of the habeas corpus.

75. In addition, according to the Truth and Reconciliation Commission, since the coup d'état of April 2002, the implementation of forced disappearance as practice became heightened and

created a climate in which the habeas corpus as a legal remedy turned to be ineffective [FN92]. It was a widespread practice where “the justice administrators failed to protect the citizens’ rights, by declaring the writs of habeas corpus inadmissible” and where the Public Prosecutor’s Office “failed to exercise its duty to monitor the strict respect for human rights that needed to be shown while carrying out detentions and proved to be impassive to the requests victims’ next-of-kin” and it did not comply with its duty to appropriately investigate into the crimes, for its lack of independence from the Executive power [FN93]. This had a particular effect on the people identified by the estate authorities as alleged members of Sendero Luminoso or Movimiento Revolucionario Tupac Amarú (Tupac Amarú Revolutionary Movement or MRTA). [FN94]

[FN92] Cf. Final Report of the CVR, 2003, volume VIII, General Conclusions, para. 128, available at http://www.cverdad.org.pe/ifinal/index.php. See also, Case of Gómez Palomino V. Perú, supra note 63, para. 54.1.
[FN93] Cf. Final Report of the CVR, 2003, volume VIII, General Conclusions, para. 123 to 131, available at http://www.cverdad.org.pe/ifinal/index.php
[FN94] Cf. Case of Gómez Palomino V. Peru, supra note 63, para. 54.1.

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76. The Court considers that, pursuant to the general obligations contained in Articles 1(1) and 2 of the Convention, the violation of the right enshrined in Article 7(6) thereof took place, in the case at hand, as from the moment in which it was established a restriction in the legislation by which the exercise of the right protected was impracticable, a situation that was heightened by the context in which such writs were not effective.

77. As to Article 25 of the Convention, the violation of which is alleged by the representatives, this Tribunal has held that if both Articles 25 and 7(6) of the Convention, are examined together, "amparo" comprises a whole series of remedies and that habeas corpus is but one of its componens. [FN95] Apart from the foregoing, in light that Article 7(6) of the Convention has its own legal content and the principle of effectiveness (effet utile) is interrelated to the duly protection of all the rights enshrined in the treaty, the Tribunal considers it is unnecessary to analyze such provision in connection with Article 25 of the Convention.

[FN95] Cf. The Habeas Corpus in Emergency Situations (art. 27.2, 25(1) and 7(6) American Convention of Human Rights), supra note 90, para. 34.

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78. In short, the denial to acknowledge the detention and to disclose the fate or whereabouts of Kenneth Ney Anzualdo Castro transformed his deprivation of liberty or abduction into a forced disappearance, according to the elements included in it, even when, like in this case, the next-of-kin turned to different instances and authorities asking for information and letting them know about the disappearance.

79. Evidently, the detention of Kenneth Ney Anzualdo Castro constituted an act of abuse of power, it was not ordered by a competent authority and its purpose was not to bring him before a

court or another legally authorized officer to decide about the lawfulness of such detention; instead, it was the first act to perpetrate his disappearance. Apart from denying his detention and disclosing his whereabouts, the establishment of clandestine detention centers was an aggravating circumstance to foster complex criminal activities. In sum, the estate agents acted outside the law, taking advantage of the structure and premises of the State to perpetrate the forced disappearance of people by means of the systematic nature of the repression to which certain sectors of the population identified as subversive or terrorists or, in other way, opponents to the government, were subjected.

80. It is a paradigm that the activities carried out to perpetrate this disappearance were addressed against university students, which was intended not only to cause the disappearance itself but also to create "a general state of anguish, insecurity and fear", [FN96] in the social as well as in the intellectual sectors of the society. According to the Truth and Reconciliation Commission, the forced disappearance has affected mostly university students since state authorities considered that some universities were subversive centers. Hence, after the coup d' état of 1992, an "integral strategy" was implemented and the counter-subversive operations of the Armed Forces were extended to certain public universities. In 1993, the year in which the facts of the instant case occurred, many students of several universities were made disappeared. [FN97]

[FN96] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 149.
[FN97] Cf. Final Report of the CVR, 2003, volume V, chapter 2, Stories that represent violence, page 690, available at http://www.cverdad.org.pe/ifinal/index.php

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81. As a result, the deprivation of liberty was of a nature blatantly contrary to the typical definition of rule of law in a democratic society, in violation of the right to personal liberty of Mr. Anzualdo Castro.

82. As to what happened to Mr. Anzualdo after his detention in the basement of SIE, the indicia and evidence furnished do not allow to determine his fate or whereabouts. The fact that "detainee 5C"- presumably, Mr. Anzualdo- did no longer appear in the logbooks of the SIE as of December 30, 1993 (supra paras. 43 and 50) may have different explanations, including the possibility that he was transferred to another place. Nevertheless, the truth is that his whereabouts remains unknown; therefore the appropriate legal discussion for his situation is that of forced disappearance of persons.

83. With regard to the methods used to destroy evidence of the crimes committed during the forced disappearance, the Truth and Reconciliation Commission noted that the methods included, but were not limited to, mutilation or incineration of the victims 'remains. Such practice was characterized by the use of clandestine detention centers, for example, those set up in the premises of the Army's Intelligence Service, widely known as the basements of the SIE, where disappeared people were interrogated and, probably, murdered. It was verified that incinerators were installed in such basements in order to eliminate the material evidence of the disappeared people who were executed and ensure, in this way, impunity; a practice that was

observed in other state premises of the country. [FN98] The existence of the basements at the SIE and the incinerators was confirmed in the book "Muerte en el Pentagonito" [FN99] and the expert witness, Mr. Baraybar, described before the Court his visit to the basements of the SIE and the existence of two incinerators, as well as the findings of human remains inside them. [FN100]

[FN98] Cf. Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 71, 72 and 114, available at http://www.cverdad.org.pe/ifinal/index.php, and report of the Investigating Subcommittee in charge of the investigation of the constitutional complaint Nº 134, pages. 27-30 (record of evidence, volume VIII, appendix 13 of the brief of pleadings and motions, pages 2806-2809).
[FN99] "Muerte en el Pentagonito" was written by the journalist Ricardo Uceda and published in the year 2004.
[FN100] Cf. expert opinion rendered by expert witness José Pablo Baraybar Do Carmo at the public hearing held before the Inter-American Court on April 2, 2009.

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84. Likewise, the Ad Hoc State Attorney's Office made reference to the pattern mentioned by indicating that: "[the] people would have been tortured in order to obtain information from them about the subversive organization, and their whereabouts remain unknown up to the present, which allows to establish that they were eliminated by agents of SIE and their remains incinerated, according to witnesses sealed with secret codes" and that "Anzualdo [...] was alive little time in the Pentagonito." [FN101]

[FN101] Cf. amendment to request the Active Extradition of the Ad Hoc State's Attorney Office of March 21, 2006 (record of evidence, Volume VIII, appendix 16 to the Brief of Pleadings and Motions, pages 2909 to 2910).

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85. Without prejudice to the fact that the Court has considered that the practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible, [FN102] the Tribunal has also held that subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case. [FN103] In addition, this Tribunal has mentioned that forced disappearance violates the right to humane treatment since "the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment […] incompatible with paragraphs 1 and 2 of [Article 5 of the Convention]." [FN104]

[FN102] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 157 and Case of Ticona Estrada V. Bolivia, supra note 63, para. 59; and Case of Gómez Palomino, supra note 63, para. 103.
[FN103] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 175 and Case of Ticona Estrada V. Bolivia, supra note 63, para. 59.
[FN104] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 156 and 187; and Case of Ticona Estrada V. Bolivia, supra note 63, para. 58; and Case of Chaparro Alvarez and Lapo Iñiguez V. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171.
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86. In the instant case, Mr. Anzualdo Castro was abducted or deprived of his liberty and taken to a secret detention center. Within said context of systematic practice of forced disappearance, and given the modus operandi of the disappearances at the time of the events, the coercive relocation of Mr. Anzualdo Castro to the SIE basements and the subsequent incommunication to which he was subjected, have certainly caused him strong feelings of fear, anguish and defenselessness and it is reasonable to assume that state agents could have subjected him to torture or cruel, inhumane and degrading treatment and, later on, killed him. Based on the foregoing reasons, the State failed to comply with its duty to ensure every subject to its jurisdiction the right not to have one's life taken arbitrarily and the right to humane treatment, which comprises the reasonable prevention of situations that could result in the violation of these rights, specially in the practice of forced disappearance. Therefore, the State is responsible for the violation of the right to humane treatment and life of Mr. Anzualdo Castro.

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87. As to the alleged violation of Article 3 of the Convention (supra paras. 56 and 57) the Court has noted that the content itself of the right to juridical personality is that every person has the right

To be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights [which] implies the capacity to be the holder of rights (capacity and exercise) and obligations; the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of [the]h rights and obligations [FN105].

[FN105] Case of Bámaca Velásquez V. Guatemala. Merits, supra note 42, para. 179. Case of the Girls Yean and Bosico V. Dominican Republican. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 8, 2005. Series C No. 130, para. 176; Case of the Saramaka People V. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 166; and Case of Sawhoyamaxa Indigenous Community V. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 188.
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88. This right represents a parameter to determine whether a person is entitled to any given rights and whether such person can enforce such rights, [FN106] therefore, the failure to recognize or acknowledge such capability places the person in a vulnerable position in relation to the State or third parties. [FN107] In this way, the content of the right to juridical personality refers to equivalent general duty of the State to provide the means and general juridical conditions necessary to guarantee each person the free and full enjoyment of the right to the recognition of his or her juridical personality. [FN108]

[FN106] Cf. Case of the Sawhoyamaxa Indigenous Community V. Paraguay, supra note 105 para. 188; Case of the Saramaka People, supra note 105, para. 166.
[FN107] Cf. Case of the Girls Yean and Bosico V. Dominican Republic, supra note 105, para. 179; Case of the Saramaka People V. Suriname, supra note 105, para. 166 and Case of the Sawhoyamaxa Indigenous Community V. Paraguay, supra note 105 para. 188.
[FN108] Cf. Case of the Sawhoyamaxa Indigenous Community V. Paraguay, supra note 105 para. 189; Case of the Saramaka People, supra note 105, para. 167.

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89. However, pursuant to the principle of effectiveness and the need of protection in those cases of people and groups in situation of vulnerability, this Tribunal has observed the broader legal content of this right, by considering that the State "is bound to guarantee to those persons in situations of vulnerability, exclusion and discrimination, the legal and administrative conditions that may secure for them the exercise of such right, pursuant to the principle of equality under the law." [FN109] For example, in the case of the Sawhoyamaxa Indigenous Community, the Court considered that it members "have remained in a legal limbo in which, though they have been born and have died in Paraguay, their existence and identity were never legally recognized, that is to say, they did not have personality before the law." [FN110]

[FN109] Case of the Sawhoyamaxa Indigenous Community V. Paraguay, supra note 105 para. 189; Case of the Saramaka People V. Suriname, supra note 105, para. 166.
[FN110] Case of the Sawhoyamaxa Indigenous Community V. Paraguay, supra note 105 para. 192.

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90. Certainly, the case-law has developed the legal content of this right in those cases involving human rights violations other than forced disappearance of people, given the fact that in most of these cases, the Tribunal had believed that there were no facts leading to the conclusion that the State violated Article 3 of the Convention. [FN111] Nevertheless, given the multiple and complex nature of this serious human right violation, the Tribunal reconsiders its previous position and deems it is possible that, in this type of cases, the forced disappearance may entail a specific violation of said right: despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her

in a kind of limbo or uncertain legal situation before the society, the State and even the international community.

[FN111] Cf. Case of Bámaca Velásquez V. Guatemala. Merits, supra note 42, para. 179-181; Case of La Cantuta V. Peru, supra note 58, para. 121; and Case of Ticona Estrada et al. V. Bolivia, supra note 63, para. 71. Moreover, in two cases, the Court declared the violation of Article 3 of the Convention based on the State's acquiescence to the alleged violation of this provision. Cf. Case of Benavides Cevallos V. Ecuador. Merits, Reparations and Costs. Judgment of June 19, 1998. Series C No. 38, para. 43; Case of Trujillo Oroza V. Bolivia. Merits. Judgment of January 26, 2000. Series C No. 64, para 41.

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91. In this sense, the Court bears in mind that one of the characteristics of forced disappearance, in contrast to extra-legal executions, is that it implies the State's refusal to acknowledge that the victim is under its custody and provide information in that regard, in order to create uncertainty as to his whereabouts, life or death and cause intimidation (supra para. 60 and 80).

92. Several international treaties recognize the possible violation of this right in this type of cases, by relating it to the consequent lack of protection before the law of the individual, as a result of his or her abduction or deprivation of liberty and subsequent denial or lack of information on the part of the state authorities. In fact, this relationship arises from the evolution of the specific, international corpus iuris related to the prohibition of forced disappearance.

93. Hence, the 1992 Declaration on the Protection of All Persons from Enforced Disappearance [FN112] provides in its Article 1, that

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life. (Emphasis added)

[FN112] Adopted by the United Nations General Assembly in resolution 47/133 of December 18, 1992.

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94. Moreover, the definition of forced disappearance contained in Article II of the 1994 Inter-American Convention on this field, recognizes that one of its elements is the consequence of "impeding his or her recourse to the applicable legal remedies and procedural guarantees."

95. Likewise, Article 7(2)(i) of the 1998 Rome Statute [FN113] provides that "enforced disappearance of persons" means the "arrest, detention or abduction of persons by, or with the

authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

[FN113] Document A/CONF.183/9 of July 17, 1998, amended by procès-verbaux of November 10, 1998; July 12, 1999; November 30, 1999; May 8, 2000; January 17, 2001 and January 16, 2003. It entered into forced on July 1, 2002.

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96. In a similar sense, the definition contained in Article 2 of the International Convention on the Protection of All Persons from Enforced Disappearance [FN114] of 2006, establishes that the result of the refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person is, together with the other elements of the disappearance, what places the person "outside the protection of the law."

[FN114] Adopted by the United Nations General Assembly in its resolution A/RES/61/177 of December 20, 2006.

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97. The Human Rights Committee has recognized, in turn, that the forced disappearance may amount to a violation of the right to juridical personality in light of the following aspects: a) the forced disappearance deprived the individuals of their capacity to exercise entitlements under law, including all their other rights under the Covenant, and of access to any possible remedy as a direct consequence of the actions of the State, ; b) if the State failed to conduct a thorough investigation into the fate of disappeared person or provided the author with any effective remedy and c) the forced disappearance places the disappeared person outside the protection of the law. [FN115]

[FN115] Cf. United Nations Human Rights Committee, case of Zohra Madoui v. Algeria, Communication No. 1495/2006, 94º period of sessions, CCPR/C/94/D/1495/2006 (2008), October 28, 2009, paras. 7.7 and 7.8; case of Messaouda Kimouche V. Algeria, Communication No. 1328/2004, 90º period of sessions, CCPR/C/90/D/1328/2004 (2007), July 10, 2007, paras. 7.8 and 7.9.

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98. The independent Expert, of the United Nations on Enforced or Involuntary Disappearance of Persons has held that the forced disappearance may involve the recognition as a person before the law, which derives from the fact that with the acts of forced disappearance, the victim is intentionally removed from the protection of the law. [FN116] Furthermore, in accordance with the content of Article 1(2) of the Declaration on Enforced Disappearance, the United Nations Working Group has sustained that any act of forced disappearance places the person outside the protection of the law. [FN117]

[FN116] United Nations, Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/4, E/CN.4/2002/71, January 8, 2002, para. 70.
[FN117] United Nations, Working Group on Enforced or Involuntary Disappearances, General Comment on the definition on forced disappearance. In a similar sense, Reports of the Working Group on Enforced or Involuntary Disappearance, E/CN.4/2001/68, December 18, 2000, para. 31, and E/CN.4/1996/38, January 15, 1996, para. 43.

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99. Moreover, apart from its allegations in this case, the Inter-American Commission has, in several precedents, constantly considered that the persons who were detained and then disappeared "were excluded from the legal and institutional framework of the State", which constituted the negation of their very existence as human beings recognized as persons before the law", [FN118] and as a result, it has declared the violation of Article 3 of the Convention.

[FN118] Cf. among others, CIDH, Report N° 11/98 (case 10.606- Guatemala), para. 57; Report Nº 55/99 (Cases 10.815, 10.905, 10.981, 10.995, 11.042, 11(1)36 – Perú), para. 111; Report Nº 56/98 (Cases 10.824, 11.044, 11(1)24, 11(1)25, 11(1)75 – Perú), para. 110; Report Nº 3/98 (Case 11.221 – Colombia), para. 64; Report Nº 30/96 (Case 10.897 – Guatemala), para. 23; and Report Nº 55/96 (Case 8076 - Guatemala), para. 24.

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100. In turn, at the domestic level of the States of the region, it has been necessary to provide a response to the consequences of the phenomenon of forced disappearance of several people in different contexts and periods, which were not contemplated in the legal system. In particular, the States have adopted several acts and established case-law in light of the lack of specific rules regarding the absence of a person due to forced disappearance and the corresponding inability to exercise his or her rights and obligations and the effects that such situation produces on his or her next-of-kin and third parties. [FN119] In the instant case, for example, before the lack of information in this regard, after nine years, the next-of-kin of Mr. Anzualdo requested and received a "certificate of absence by reason of forced disappearance", under the terms of Act 28.413. [FN120]

[FN119] In Argentina, Act 24.321 was enacted on June 8, 1994 on absence due to forced disappearance; in Brazil, Act 9.140/95 was enacted on December 4, 1995 which "reconhece como mortas pessoas desaparecidas em razão de participação, ou acusação de participação, em atividades políticas, no período de 2 de setembro de 1961 a 15 de agosto de 1979, e dá outras providências"; in Colombia, there is a decision of the Open Court of the Constitutional Court of May 23, 2007 (Judgment C-394/07) by which it was ruled about the discriminatory treatment of Act 986 of 2005, since it failed to include the victims of forced disappearance without giving any valid and constitutional justification; in Chile, Act 20.377 was enacted and it was published on

September 10, 2009, on "Declaration of Absence due to Forced Disappearance of People" and in the case of Uruguay, Act 17.894 was enacted and published on September 19, 2005, on “Persons whose forced disappearance was confirmed by Appendix 3.1 of the Final Report of the Peace Commission.”
[FN120] According to what the representatives informed, which was not contested by the State, there is a law in Peru that governs the possibility of requesting the absence due to forced disappearance, in order to “provide victims’ families […] the necessary resources to have access to the recognition of their rights”, by means of a judicial declaration, which has the same effects that the judicial declaration of presumptive death. Cf. section 13 of Act 28.413 of November 24, 2004 (record of evidence, volume VIII, appendix 19 to the brief of pleadings and motions, pages 3028-3030).
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101. Based on the foregoing, the Court deems that in cases of forced disappearance of persons, the victim is placed in a situation of legal uncertainty that prevents, impedes or eliminates the possibility of the individual to be entitled to or effectively exercise his or her rights in general, in one of the most serious forms of non-compliance with the State’s duties to respect and guarantee human rights. This was translated into the violation of the right to juridical personality of Mr. Anzualdo Castro.

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102. Before these facts, the State had not only the obligation to respect the infringed rights, but also to guarantee them by means of the diligent prevention and investigation into the forced disappearance. Upon his disappearance, the state authorities must have conducted a serious, complete and effective investigation to determine his fate or whereabouts and the truth of the facts, to identify the responsible and, if applicable, to impose the corresponding punishments, for which the State should have provided a suitable regulatory framework that would allow it to ensure the effective guarantee of the rights by means of the available remedies. The assessment of the obligation to guarantee such rights, by means of effective investigations into what happened and the existence of an appropriate regulatory framework shall be made in the following Chapter of this Judgment. For the purposes of determining the alleged violations, it is enough to point out that, in this case, the State has not effectively guarantee the rights enshrined in the provisions analyzed by means of the domestic procedures.

103. Based on the foregoing reasons, the Court considers that the State is responsible for the forced disappearance of Mr. Anzualdo Castro, committed within the framework of a systematic practice of that type of serious human rights violations, fostered, implemented and consented by state agents at the time of the events. Consequently, the State is responsible for the violation of the rights to personal liberty, humane treatment, life and juridical personality, embodied in Articles 7(1), 7(6), 5(1), 5(2), 4(1) and 3 of the Convention, in conjunction with Article 1(1) thereof and Article I of the ICFDP, to the detriment of Mr. Kenneth Ney Anzualdo Castro.

B.2 Right to humane treatment of the next-of-kin

104. The Commission and the representatives alleged that the State is responsible for the violation of the right to humane treatment of the next-of-kin of Kenneth Ney Anzualdo Castro, that is, his father, Félix Vicente Anzualdo Vicuña; his mother, Iris Isabel Castro Cachay de Anzualdo, who died on October 26, 2006; and his siblings, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro.

105. This Court has held, in several opportunities that the relatives of the victims of violations of human rights may, in turn, be victims. [FN121] In particular, in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred. [FN122]

[FN121] Cf. Case of Bámaca Velásquez V. Guatemala. Merits, supra note 42, para. 160; Case of Cantoral Huamaní and García Santa Cruz V. Perú. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 112; and Case of Escué Zapata V. Colombia. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 77.
[FN122] Cf. Case of Blake V. Guatemala. Merits, supra note 42, para. 114; Case of Ticona Estrada V. Bolivia, supra note 63, para. 87; and Case of La Cantuta V. Perú, supra note 58, para. 123.

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106. The statements of the witnesses, rendered before the Court, show the effects of the forced disappearance. Mr. Félix Vicente Anzualdo Vicuña, father of Kenneth, declared that:

Upon the disappearance of my son, the family feeling broke, cracked, there was no more harmony, there was no more understanding [...] it was such a pain, morally speaking, emotionally […]. The thing is that we feel alienated since all the efforts we have made before the State had no effects, everything closes; people do not taken us into account; it would be like the life of my son has no value, that is why we feel alienated […]. [We were happy with the future, but since my son has disappeared, everything has fallen on our faces, there is no better hope. [FN123]

[FN123] Statement rendered by Félix Vicente Anzualdo Vicuña at the public hearing held before the Court on April 2, 2009.

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107. Regarding Mrs. Iris Isabel Castro Cachay de Anzualdo, mother of Mr. Anzualdo Castro, her daughter, Mrs. Marly Arleny Anzualdo Castro, stated that:

When she heard the news that he was taken to the basements, that he was tortured and then, cremated, my mother no longer.... it was like what she said 'this is it' [...] her health started to collapse every time a bit more, she started to fade away like a candle, though she went through

examinations and she was always told she [...] was okay [...] but at the end [...] she received different treatments, she had a bleeding and later on, they discovered it was a tumor that had turned into cancer and then she was confined to the bed. My father and I had to be with her at every moment […]. She looked at a picture and she had a blunt look and said no more … [FN124].

[FN124] Statement rendered by Marly Arleny Anzualdo Castro at the public hearing held before the Inter-American Court on April 2, 2009.

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108. Furthermore, regarding her personal case, Mrs. Marly Arleny declared that:

[t]he fact that someone of your family disappears kills you, it breaks you up; it is something that you cannot process in your head; it is there, everyday [...] I would like to talk about what we feel, we, the people who are going through this kind of situations, as if our dignity does not exist… [FN125].

[FN125] Statement rendered by Marly Arleny Anzualdo Castro at the public hearing held before the Inter-American Court on April 2, 2009.

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109. The Court has also verified the effects of the stigmatization on the family of Mr. Anzualdo Castro when they were treated as next-of-kin of a terrorist, before and after his disappearance. In that regard, Mrs. Marly Arleny stated:

We are being told at our faces like if we do not know that we are nobody and we demand that, since we have the burden of being terrorists or subversive; we cannot even defend, as we would like, the respect that we deserve […] therefore, we do not have even the right to get indignant, to claim for anything because we have that title written all over on our faces. That is what happened to my brother Rommel when my brother Kenneth was arrested, he was investigated for fifteen days, but in the newspapers of that time it was published that my brother Rommel was the subversive one since he worked in a mine field, he is a mechanical engineer and what the newspapers published was that he wanted to blow the towers up. Since I had studied chemical engineering, then I was the one who prepared the bombs. However, when the investigation was conducted, my brother Rommel was never arrested, neither did I, but the newspapers published news about us; at that time, nobody wanted to hire [Rommel] since he was branded as a terrorist; therefore, he had to leave [...] he went to Spain since he said "mother, everyone looks at me, they do not trust me, I can no longer work anywhere"; that is why my brother had to leave the country [FN126].

[FN126] Statement rendered by Marly Arleny Anzualdo Castro at the public hearing held before the Inter-American Court on April 2, 2009.

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110. In this connection, it spring from the affidavit rendered by Mr. Rommel Anzualdo Castro, the powerless he felt before the disappearance of his brother and the subsequent feeling of anguish. He also mentioned that his life plan was affected for what happened to his brother. [FN127]

[FN127] See affidavit rendered by Rommel Darwin Anzualdo Castro on March 9, 2009 (record of evidence, volume XI, pages 4335-4339).

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111. In addition, in the psychological expert examination that contains the evaluation of three next-of-kin of Mr. Anzualdo Castro, it was verified that the disappearance had an irreparable and traumatic impact on the family group and that a series of factors affected their health condition. [FN128]

[FN128] Cf. psychological expert reports made by Carlos Jibaja Zarate of Felix Vicente Anzualdo Vicuña, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro (record of evidence, volume XI, pages 4386, 4392 and 4399).

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112. Regarding the argument of the State about the non-existence of a causal link between the disappearance of Mr. Anzualdo Castro and the cancer development in his mother, in fact, no evidence has been furnished in order to consider this proven. However, in several cases serious human rights violations brought to this Tribunal's attention, the Court has verified physical damage suffered by the victims' next-of-kin as a consequence of the emotional or psychological damage caused by such violation [FN129]. In this way, the Court deems reasonable to consider that the health of Mrs. Castro Cachay de Anzualdo has considerable deteriorated as a result of intense emotional distress inflicted due to her son’s disappearance. For example, according to the testimonies furnished, the health of Mrs. Iris Isabel deteriorated, until she died, after the publication of the book “Muerte en el Pentagonito”, which detailed the possible fate of Mr. Anzualdo. [FN130] This has not been contested.

[FN129] Cf. among others, Case of Juan Humberto Sánchez V. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 166; Case of La Cantuta V. Peru,, supra note 58, para. 126; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 169 and 256.
[FN130] Cf. death certificate of Iris Isabel Castro Cachay de Anzualdo of October 26, 2006 (record of evidence, volume VIII, appendix 3 to the brief of pleadings and motions, page 2706).

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113. Furthermore, based on the foregoing terms (supra para. 102), before the facts of forced disappearance, the State had the obligation to guarantee the right to humane treatment of the next-of-kin also by means of effective investigations. In other cases, the lack of effective

remedies has been regarded by the Court as an additional source of suffering and anguish for the victims and their next of kin [FN131]. The Court has verified all the activities carried out by the next-of-kin in the event of the disappearance of Mr. Anzualdo Castro before different institutions and state agencies to determine his whereabouts (supra paras. 70 and 71) as well as to prompt the investigations (infra paras. 127 to 154). The delay in the investigations, which were also incomplete and ineffective (infra para. 156 and 157) has exacerbated the next of kin's feelings of impotence. The Court recalls that in other cases, the continued deprivation of the truth regarding the fate of a disappeared person constitutes cruel, inhumane and degrading treatment against close next of kin. [FN132] It is clear, for this Tribunal, the connection of the next-of-kin's suffering with the violation of the right to truth (infra paras. 118 to 120, 168 and 169), which enlightened the complexity of the forced disappearance and the multiple effects it produced.

[FN131] Cf. Case of Blake V. Guatemala. Merits, supra note 42, para. 114; Case of Heliodoro Portugal V. Panamá, supra note 58, para. 174; and Case of La Cantuta V. Perú, supra note 58, para. 125.

[FN132] Cf. Case of Trujillo Oroza V. Bolivia. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, para. 114; Case of La Cantuta V. Peru,, supra note 58, para. 125; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 101.

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114. The facts of the instant case allow to conclude that the violation of the personal integrity of Mr. Anzualdo Castro’s next-of-kin flows from the situations and circumstances they had to go through, before, during and after said disappearance, as well as from the general context in which the events occurred. The next of kin present physical and mental sequels of the facts described above and the events have made an impact on their social and work relations and altered their families' dynamics. These situations, fully understood in the complexity of the forced disappearance, will persist for as long as some of the verified factors of impunity prevail. [FN133] As a result, the State is responsible for the violation of the right to humane treatment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro, embodied in Article 5(1) and 5(2) of the Convention, in connection with Article 1(1) thereof.

[FN133] Cf. Case of Goiburú et al. V. Paraguay, supra note 59, para. 103; and Case of La Cantuta V. Perú, supra note 58, para. 126.

VII. ON THE RIGHT TO ACCESS TO JUSTICE AND THE OBLIGATION TO CONDUCT EFFECTIVE INVESTIGATIONS (ARTICLES S 8(1) (RIGHT TO A FAIR TRIAL) [FN134] AND 25(1) (RIGHT TO JUDICIAL PROTECTION) [FN135] IN CONJUNCTION WITH ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) AND 2 (DOMESTIC LEGAL EFFECTS) [FN136] OF THE AMERICAN CONVENTION AND ARTICLES I, II AND III ON THE INTER-AMERICAN CONVENTION ON ON FORCED DISAPPEARANCE OF PERSONS)

[FN134] Article 8(1)
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.
[FN135] Article 25(1)
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, even though such violation may have been committed by persons acting in the course of their official duties.
[FN136] Article 2
Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

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115. In this chapter, the Court shall examine the following aspects of the forced disappearance of people: a) the right to know the truth; b) the lack of a diligent and effective criminal investigation, and c) the existence of an appropriate regulatory framework for the investigation into the facts.

A. On the right to know the truth in the cases of forced disappearances

116. The Commission alleged that the State is responsible for the violation of the right to the truth, which derives from the right to access to justice, based on Articles 1(1), 8 and 25 of the American Convention, by failing to comply with its duty to investigate, prosecute and punish the responsible for the forced disappearance of Mr. Anzualdo Castro, to the detriment of his next-of-kin, so long as his fate remains uncertain.

117. The representatives, in addition, alleged that “the evolution of contemporary international law within the universal and Inter-American spheres put forth a broader view point of the right to the truth, according to which it is an autonomous right and is related to a wider ranking of rights", according to them, the ones contained in Articles 1(1), 8, 13 and 25 of the American Convention. Hence, they alleged that, in the instant case, the State violated the right to the truth of the next-of-kin of Mr. Anzualdo Castro, for the "deficiency in the initial investigation, the inaction of the authorities [...] the impunity surrounding the case and the lack of information about [his] whereabouts.”

118. The Court has considered the content of the right to the truth in its case-law, especially in cases of forced disappearances. In the case of Velásquez Rodríguez the Court confirmed the existence of “the right to inform the relatives of the fate of the victims and, if they were killed, the location of their remains” [FN137]. In this type of cases, it is considered that the relatives of the disappeared victims are victims of the phenomena of forced disappearance, by which they are entitled to have the facts investigated and the responsible prosecuted and punished [FN138]. The

Court has recognized that the right to the truth of the relatives of victims of serious human rights violations is framed within the right to access to justice [FN139]. Furthermore, the Court has based the obligation to investigate into the facts as a means for redress, on the need to repair the violation of the right to know the truth in the specific case [FN140]. The right to know the truth has been also recognized by several treaties of the United Nations and recently, by the General Assembly of the Organization of American States (OAS) [FN141].

[FN137] Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 181.
[FN138] Cf. Case of Blake V. Guatemala. Merits, supra note 42, para. 97.
[FN139] Cf. among others, Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 181;Case of Bámaca Velásquez V. Guatemala. Merits, supra note 42, para. 201; Case of Barrios Altos V. Perú. Merits. Judgment of March 14, 2001. Series C Nº. 75, para. 48; Case of Almonacid Arellano et al. V. Chile, supra note 9, para. 148; Case of La Cantuta V. Peru,, supra note 58, para. 222; Case of Heliodoro Portugal V. Panamá, supra note 58, para. 244; Case of Ticona Estrada V. Bolivia, supra note 63, para. 289 and Case of Kawas Fernández V. Honduras, supra note 14, para. 117.
[FN140] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 181; Case of Kawas Fernández V. Honduras, supra note 14, para. 190 and 191; Case of Tiu Tojín V. Guatemala., supra note 59, para . 103.
[FN141] Cf. inter alia, Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1); Report on the update of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, by Professor Diane Orenlicher (E/CN.4/2005/102, of February 18, 2005); Study on the Right to the Truth, Report of the United Nations High Commissioner for Human Rights (E/CN.4/2006/91 of January 9, 2006); OAS General Assembly. Resolutions on the Right to the Truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/07) and AG/RES. 2406 (XXXVIII-O/08).

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119. The Tribunal deems that the right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, [FN142] on the one hand, by means of the obligation to investigative human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. [FN143] The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. [FN144] Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society. [FN145]

[FN142] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 181; Case of Kawas Fernández V. Honduras, supra note 14, para. 190; Case of Tiu Tojín V. Guatemala., supra note 59, para . 103.

[FN143] Cf. Case of Las Palmeras V. Colombia. Reparations and Costs. Judgment of November 26, 2002. Series C No. 96, para. 67; Case of Kawas Fernández V. Honduras, supra note 14, para. 194, Case of Heliodoro Portugal, supra note 58, para. 247; Case of Valle Jaramillo et al. V. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 233.
[FN144] Cf. Case of the Rochela Massacre V. Colombia, supra note 13, para. 195; and Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 129.
[FN145] Cf. Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 128.
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120. Regarding the alleged violation of Article 13 of the Convention, the representatives limited to point out that the right to the truth is connected "to a wider ranking of rights" and they quoted several international treaties, related reports and a case before the Inter-American Commission, but they did not relate it to the facts of the instant case. Consequently, the elements presented are insufficient to prove the alleged violation of said provision.

B. On the lack of a prompt and effective investigation of a criminal nature

121. The Commission alleged that the State "breached its obligation to conduct a proper, effective investigation into the abduction and forced disappearance" of Mr. Anzualdo Castro, in violation of Articles 8, 25 and 1(1) of the American Convention. Specially, it claimed that the State failed to conduct investigations and procedures "sufficiently diligent to determine the whereabouts or the responsible." The representatives emphasized that "the domestic proceedings have not provided effective recourse to ensure the next-of-kin access to justice and […] full reparation in the instant case." The State claimed that "it is not responsible for the violation of the rights to a fair trial and judicial guarantees" of Mr. Anzualdo Castro and his relatives.

122. The Court has established that States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1(1)) [FN146].

[FN146] Cf. Case of Velásquez Rodríguez V. Honduras. Preliminary Objections, supra note 6, para. 91; Case of Yvon Neptune V. Haití, supra note 38, para 77; and Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 114.
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123. In order for a criminal investigation to be an effective recourse in order to ensure the right to access to justice of the alleged victims, as well as to guarantee the rights that have been abridged in the instant case, it 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 or upon their offer of proof [FN147].

[FN147] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 177; Case of Kawas Fernández V. Honduras, supra note 14, para. 101; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 100; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 144.

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124. The right to access justice implies the effective determination of the facts under investigation and, if applicable, of the corresponding criminal responsibilities in a reasonable time; therefore, considering the need to guarantee the rights of the injured parties [FN148], a prolonged delay may constitute, in itself, a violation of the right to a fair trial [FN149]. Besides, because it is a forced disappearance, the right to access justice includes the determination of the fate or whereabouts of the victim (supra para. 118).

[FN148] Cf. Case of Bulacio V. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 114; Case of Kawas Fernández V. Honduras, supra note 14, para. 112; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 154

[FN149] Cf. Case of Hilaire, Constantine and Benjamín et al. V. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 145; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 154; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 148.

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125. In these cases, impunity [FN150] will not be eliminated unless it is accompanied by the determination of the general responsibility- of the State- and individuals- criminal and of its agents or of individuals. [FN151] In complying with this obligation, the State is required to remove all obstacles, legal and factual, contributing to impunity [FN152]. The investigations must be conducted in line with the rules of due process of law, which implies that the bodies of administration of justice must be organized in a manner so that its independence and impartiality is guaranteed [FN153] and the prosecution of grave human rights violations is made before regular courts [FN154], in order to avoid impunity and search for the truth [FN155]. Moreover, given the nature and gravity of the facts, particularly since they occurred in a context of systematic human rights violations, and since the access to justice is a peremptory rule under International Law, the need to eliminate impunity gives rise to an obligation for the international community to ensure inter-State cooperation by which they must adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and the international law to prosecute it and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so [FN156].

[FN150] In this regard, the Court has defined impunity as “the overall lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention.” Cf. Case of the “White Van” (Paniagua Morales et al.) V. Guatemala, Merits, supra note 12, para. 173; Case of Tiu Tojín V. Guatemala., supra note 59,

para . 69, and Case of the Miguel Castro- Castro Prison V. Perú. Merits, Reparations and Costs. Supra note 9, para. 405.
[FN151] Cf. Case of Goiburú et al. V. Paraguay, supra note 59, para. 131; Case of Perozo et al. V. Venezuela, supra note 6, para. 298; and Case of Rios et al. V. Venezuela, supra note 6, para. 283.
[FN152] Cf. Case of La Cantuta V. Peru, supra note 58, para. 226; Case of Kawas Fernández V. Honduras, supra note 14, para. 192; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 232.
[FN153] Cf. Case of Reverón Trujillo V. Bolivia, supra note 11, para. 67 and 68; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55, among others.
[FN154] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 180; Case of the 19 Tradesmen V. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C N. 109, para. 173 and 174, and Case of the Rochela Massacre V. Colombia, supra note 13, para. 200.
[FN155] The Court has established, in this regard, that "[t]hose remedies that, owing to the general conditions of the country or even the particular circumstances of a case, are illusory cannot be considered effective." Judicial Guarantees in States of Emergency (art. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24.
[FN156] Case of Goiburú et al. V. Paraguay, supra note 59, para. 131; and Case of La Cantuta V. Perú, supra note 58, para. 160.
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126. The Court shall now analyze whether the State has diligently conducted criminal investigations within a reasonable time and if such investigations provided an effective recourse to ensure the alleged victims their right to access justice. To such purpose, the Tribunal may examine the corresponding domestic proceedings.

127. Given that it is possible to differentiate two stages as to the development of the criminal investigations conducted as to the disappearance of Kenneth Ney Anzualdo, the Court shall analyze next, on the one hand, the first investigation opened in 1993 and provisionally closed in 1995 and, on the other hand, the investigations opened as from 2002. To that end, the Court shall take into account the evidence furnished and the arguments submitted regarding the actions taken in the following proceedings: a) First Investigation: Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao (assigned number 227-93-III); b) Investigations opened after the year 2002: before the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves; before the Office of the Fifth Supra-Provincial Criminal Prosecutor (assigned number 50-2002); before the Office of the Third Supra-Provincial Criminal Prosecutor (assigned number 04-2007); before the Office of the Special Human Rights Prosecutor ; investigation informed by the State as preliminary objection, and the investigation against former president Fujimori and extradition proceedings (case number 45-2003).

a) Regarding the first investigation opened in 1993 [FN157]

[FN157] Investigation before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao (assigned number 227-93-III).

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128. As to the first criminal investigation, the Commission argued that the fact that the Peruvian State has ordered the opening and closure of the investigations on several occasions, and that the record of the proceedings has been reported missing, are clear indications of the lack of due diligence. It specified that "there is no evidence […] that the initial investigations included a reenactment of events, adoption of effective measures to investigate the existence of clandestine detention centers in the basements of the SIE facilities, or a search for the corpse […] at that facility." It also mentioned that "nor were key persons summoned to give statements, such as SIE personnel, police officers, and other officials on duty at the time of the events."

129. The representatives presented similar arguments; they listed some of the actions required before the existence of reasons to believe that a person was subjected to forced disappearance, and pointed out that the Prosecutor's Office failed to investigate into the possible vehicle in which Kenneth was transported and mentioned that measures were adopted at the request of the next-of-kin, that the testimonies were taken in an intimidating manner and that no additional key persons were summoned to render testimonies. Moreover, regarding the initial complaint, the representatives stated that "the Office of the Fifth Prosecutor oriented the investigation, not to elucidate the facts and the possible whereabouts of Kenneth and to avoid, in this way, the consummation of his disappearance, but to the hypothetical connection of Kenneth with subversive activities that may 'justify' the facts" and that though the Prosecutor's Office acknowledged the possibility that he was detained by state officers, it decided to close the investigation.

130. The Court notes that the first investigation was opened due to the criminal complaint filed by the father of the victim, twelve days after his disappearance, by the end of 1993 [FN158]. During the conduct of this investigation, several testimonies were taken [FN159], including the statement of Mr. Santiago Cristóbal Alvarado Santos [FN160]. In addition, a search was conducted at the domicile of the Anzualdo family, in which certain objects of Kenneth's room were seizured, including "subversive material" from newspaper clipping, leaflets and university documents, agenda and personal photography, among other things [FN161]. Furthermore, on April 26, 1994 an inspection and verification procedure was carried out at the Detention Center, at Callao Naval Base, where it was asked if, between December 15 and 25, 1993, Mr. Anzualdo was admitted "as detainee", to which they answered that "no civilian is admitted as detainee" [FN162]. Finally, an inspection was conducted at the premises where it was verified that no civilian personnel were at said place [FN163].

[FN158] According to the Commission and the representatives, on December 28, 1993 the next-of-kin of Kenneth Ney filed a complaint with the Office of the Provincial Prosecutor for Criminal Matters of Callao. The State did not contest this fact.

[FN159] Cf. Statement of Marly Arleny Anzualdo Castro rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on January 14, 1994 (record of evidence,

Volume V, appendix 11 to the application, pages 1732-1734),statement of Felix Vicente Anzualdo Vicuña rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on January 17, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1735- 1737); statement of Rubén Dario Trujillo Mejía rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on January 24, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1740-1742); statement of Milagros Juana Olivares Huapaya rendered before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao on February 10, 1994 (record of evidence, Volume V, appendix 11 to the application, pages 1743- 1744) and statement of Yheimi Torres Tuanama before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, on February 11, 1994 (record of evidence, Volume V, appendix 11 to the application, pages 1745- 1747).
[FN160] Cf. statement rendered by Santiago Cristóbal Alvarado Santos before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, on January 14, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1729-1731).
[FN161] Cf. search warrant issued by the Deputy Prosecutor of the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao of January 17, 1994 (record of evidence, volume V, appendix 11 to the application, pages 1738-1739).
[FN162] Cf. Inspection and verification record, Detention Center at the Naval Base of Callao of April 26, 1994 (record of evidence, volume V, appendix 11 to the Application, pages 1748-1749).
[FN163] Cf. Inspection and verification record, Detention Center at the Naval Base of Callao of April 26, 1994 (record of evidence, volume V, appendix 11 to the Application, pages 1748-1749).
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131. Even though some procedures were carried out, the truth is that it spring from the court file that said investigation was not correctly and timely oriented since its beginning by the authorities in charge of it, and that certain crucial actions to determine the fate or whereabouts of Mr. Anzualdo Castro, such as to forward communications to detention centers and official agencies where people deprived of liberty could be or conduct inspections into said premises, were not immediately taken. In this sense, the only measure adopted was the inspection and verification more than four months after the disappearance, which had a negative result. Moreover, the authorities did not summon other eyewitnesses of the moment in which Mr. Anzualdo Castro was forced to get off the bus and arrested.

132. Besides, the lack of effectiveness of this first investigation is deduced from the content of the decision to provisionally close the investigation issued on June 3, 1994 by the Office of the Fifth Prosecutor for Criminal Matters of Callao, which held, without any serious logical ground , that “it is deduced that the aforementioned is a sympathizer of the seditious group [Sendero Luminoso], based on the seized newspapers, and, therefore, he may have been intercepted by members of the Navy or the police, or, alternatively, he may have gone underground ” [FN164]. It does not spring from said decision, even though the Prosecutor’s Office acknowledged that there might have been state officers involved in the disappearance of Mr. Anzualdo Castro, any measure tending to elucidate if he was detained by a state authority or to identify the responsible and determine the possible criminal responsibilities. The Office of the First Superior Court Prosecutor upheld the provisional closure of the proceedings [FN165].

[FN164] Cf. Decision issued by the Office of the Attorney General, Office of the Fifth Provincial Prosecutor of Callao, on June 3, 1994 (record of evidence, Volume V, Appendix 2 to the application, pages 1615/1616 and appendix 11 to the application, pages 1750/1).
[FN165] Cf. appeal in complaint appeal filed before the First Superior Court Prosecutor of Callao, on October 27, 2004 (record of evidence, volume V, appendix 10 to the application, pages 1725-1726) and report of the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao of November 26, 1997 (record of evidence, volume V, appendix 11 to the application, pages 1753-1754).

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133. The fact that the body in charge of the investigation closed- though, provisionally- the investigation into the forced disappearance of Mr. Anzualdo Castro without exhausting any of the investigative hypothesis mentioned, based on an alleged connection with Sendero Luminoso, proves that it acted in a manner that is not consistent with its role to conduct a formal, objective, thorough and effective investigation. In this sense, the Court has already established that "the principle of legality ruling the acts performed by public officials, which governs the activities of Public Attorneys, imposes on them the obligation to carry out their duties acting on the basis of the regulations defined in Constitution and statute. That way, prosecutors must watch for the law to be correctly applied and seek the truth of the facts as they are, acting professionally, loyally and in good faith" [FN166].

[FN166] Cf. Case of Tristán Donoso V. Panamá. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 165.

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134. It is appropriate to recall that in cases of forced disappearance, it is essential the prompt and immediate action of prosecution and judicial authorities, by the order of timely and necessary measures addressed to determine the whereabouts of the victim or the place where he or she could be found alive. Nevertheless, it was six years after the disappearance, in 1999, that the Prosecutor's Office ordered the forwarding of official letters, within the framework of further investigative measures, to different public institutions in order to locate the whereabouts of Mr. Anzualdo [FN167], without obtaining any result, since the required institutions did not send any response to the authorities charged with the investigation and there is no evidence of any reiteration [FN168]. Later on, the Prosecutor's Office requested that the proceedings continue since up to that moment "it [has been] not possible to determine the whereabouts" [FN169].

[FN167] It was requested to the Identification and Marital Status Record Office of Lima, to forward the registration of Kenneth Ney Anzualdo Castro together with his date and photograph in order to collect information about a possible recent registration in some part of the country; it was requested to the Callao Harbormaster's Office information regarding the discovery of a corpse in the Peruvian coast; it was requested to the Bureau of Immigration and Naturalization information of any possible migratory movement of Kenneth Ney Anzualdo Castro; it was

requested to the Directorate of State Security of PNP [National Police of Peru] and to the National Antiterrorism Bureau of PNP information regarding the possible detention of Kenneth Ney Anzualdo Castro. There was no response whatsoever. Cf. Report N. 337-DPMP-DIVPOLJUD-JPPC of September 14, 1999 (record of evidence, volume V, appendix 11 to the application, pages 1755-1756).
[FN168] See Report N. 337-DPMP-DIVPOLJUD-JPPC of September 14, 1999 (record of evidence, volume V, appendix 11 to the application, pages 1755-1756).
[FN169] Order of the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, of September 15, 1999 (record of evidence, volume V, appendix 11 to the application, page 1759).
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135. In this regard, this Tribunal has established that in order to conduct an effective and expedious investigation, the investigating body must use all the means at its disposal to carry out all measures and investigations necessary to shed light on the fate of the victims and identify the responsible for the forced disappearance [FN170]. For this, the State will guarantee that the authorities in charge of the investigation have the logistic and scientific resources necessary to collect and process evidence, and more specifically, the power to access to the documents and information relevant to the investigation of the facts denounced and that they be able to obtain evidence of the locations of the victims [FN171]. Furthermore, it is fundamental that the investigating authorities have unrestricted access to detention centers, regarding the documentation as well as the people [FN172]. The Court repeats that the passage of time has a directly proportionate relationship to the constraints – and, in some cases, the impossibility – of obtaining evidence or testimonies that help clarify the facts under investigation and even invalidates the practice of procedures for taking evidence in order to shed light on the facts of the investigation [FN173], identify the possible perpetrators and participants and determine the possible criminal responsibilities [FN174]. It is worth mentioning that these resources and elements contribute to the effective investigation, but the lack of them does not exonerate state authorities from making the necessary efforts to comply with this obligation.

[FN170] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 174; Case of Tiu Tojín V. Guatemala., supra note 59, para . 77; Case of Heliodoro Portugal V. Panama, supra note 58; para. 144; Case of García Prieto et al. V. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101; Case of the Serrano Cruz Sisters V. El Salvador. Merits, Reparations and Costs; supra note 90, para. 83. See also, Article X of the Inter-American Convention on Forced Disappearance of Persons and Article 12 of the International Convention on the Protection of All People from Enforced Disappearance.
[FN171] Case of Tiu Tojín V. Guatemala., supra note 59, para . 77. See also, Article X of the Inter-American Convention on Forced Disappearance of Persons and Article 12 of the International Convention on the Protection of All People from Enforced Disappearance.
[FN172] Cf. Case of Myrna Mack Chang V. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 180 and 181; Case of Tiu Tojín V. Guatemala., supra note 59, para . 77; and Case of La Cantuta V. Perú, supra note 58, para. 111. See also, Article X of the Inter-American Convention on Forced Disappearance of Persons and

Article 12 of the International Convention on the Protection of All People from Enforced Disappearance.
[FN173] Cf. Case of Heliodoro Portugal V. Panamá, supra note 58, para. 150; Case of Perozo et al. V. Venezuela, supra note 6, para. 319.
[FN174] In this regard, the expert witness Baraybar held that "… the main enemy is time, in a situation of forced disappearance or in any other; the best would be to conduct an immediate investigation, in forensic terms, into the facts after their occurrence, […] time deteriorates the things, time produces a series of phenomena that, basically, can alter the evidence until such item of evidence becomes useless; bones can be altered, by the effect of water, soil, whatever…." Cf. expert opinion rendered by expert witness José Pablo Baraybar Do Carmo at the public hearing held before the Inter-American Court on April 2, 2009.
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136. Following this line of thought, the Tribunal understands that the actions of the judicial authorities and the Attorney General's Office, in this case, are framed in what the Truth and Reconciliation Commission established, as to the fact that the systematic practice of forced disappearance was also favored by the generalized scenario of impunity of the then prevailing severe violations of human rights, fostered and tolerated by the absence of civil liberties and the inefficacy of legal institutions to cope with the said systematic violations of human rights [FN175].

[FN175] Cf. Case of La Cantuta V. Peru, supra note 58, para. 92.
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137. In the chapter on the forced disappearances of its final report, the Truth and Reconciliation Commission noted that "the complaints of the next-of-kin of the disappeared people, in most of the cases, were followed by the inaction or not sufficient effective measures of the Judiciary and the prosecuting authorities; [which is] evidenced by their lack of willingness to investigate and even, hinder the investigation" [FN176]. And it cited, as way of example, the testimony rendered by the father of Kenneth, who stated that:

[…] the questions made by the prosecutor were "disturbing", they have consulted with an attorney […] the attorney said nothing; in the statements, there were things that the sister of Kenneth had not said; they re-made the statement. The authorities did not really investigate [FN177].

[FN176] Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 110, available at http://www.cverdad.org.pe/ifinal/index.php
[FN177] CVR, testimony record N° 100079 rendered by Felix Vicente Anzualdo Vicuña (record of evidence, volume V, appendix 31 to the application, pages 1844-1865).
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138. Furthermore, the Truth and Reconciliation Commission determined that the Peruvian Judiciary failed to adequately comply with its mission to combat impunity of the state agents

who committed grave human rights violations, which contributed to that situation. This situation "was heightened after the coup d' état of 1992", due to a "clear interference in the Judiciary based on massive dismissals of judges, provisional appointments and the creation of administrative bodies not involved with the judicial system, apart from the ineffectiveness of the Constitutional Tribunal " [FN178]. Another widespread practice confirmed by the Truth and Reconciliation Commission was that the Attorney General's Office did not comply with its duty to properly investigate into the crimes based on its lack of independence from the Executive Power [FN179].

[FN178] Cf. Final Report of the CVR, 2003, volume VIII, General Conclusions, para. 123-131, available at http://www.cverdad.org.pe/ifinal/index.php
[FN179] Cf. Final Report of the CVR, 2003, volume VIII, General Conclusions, para. 123-131, available at http://www.cverdad.org.pe/ifinal/index.php

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139. Finally, the representatives claimed that the State violated the principle to be assumed innocent to the detriment of Mr. Anzualdo Castro in view of the content of the decision to close the investigation of June 3, 2004. In this regard, inasmuch as this case does not deal with the innocence or guilt of Mr. Anzualdo Castro (supra para. 36) the representatives' argument is not admissible, since the presumption of innocence corresponds to "an accused person" and, in said investigation, he was not the accused, but precisely the victim. Without detriment to the foregoing, the Court notes that several state agencies linked Mr. Anzualdo Castro or his family to the group Sendero Luminoso, who were perceived by society and stigmatized by the State as "terrorists" or the next- of- kin of "terrorists", with all the negative consequences this implies [FN180]. This led, in the practice, to close the investigation into his disappearance without having determined any responsible and carried out the necessary measures to determine his fate or whereabouts.

[FN180] Cf. mutatis mutandi, Case of the Miguel Castro- Castro Prison V. Perú. Merits, Reparations and Costs. Supra note 9, para. 359.

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140. In conclusion, upon assessing the lack of objectivity with which the authorities acted when deciding to provisionally close the investigation, their attitude towards the victim, the lack of identification of the responsible, the testimonies taken at the request of the party, the lack of search for evidence at the place of the facts, the lack of investigation of the possible places where the victim could have been taken, the lack of verification of the registries at the detention centers and the manner in which the investigation was solved, allows to conclude that this first investigation was not seriously, effectively and thoroughly carried out.

b) Regarding the investigations carried out as of the year 2002 [FN181]

[FN181] Investigation before the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves; Office of the Fifth Supra-Provincial Criminal Prosecutor (assigned number 50-2002); and the Office of the Third Supra-Provincial Criminal Prosecutor (assigned number 04-2007); as well as the Investigation before the Office of the Special Human Rights Prosecutor ; investigation informed by the State in its preliminary objection and investigation against former President Fujimori and extradition proceedings (case number 45-2003).

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141. Regarding this second stage, the representatives argued that it was also characterized by the lack of due diligence, since there have been no progress in the investigations as of the year 2002, despite the fact there was new information about the facts. They alleged that "the transfer of the case from some prosecutor's offices to other offices during the proceeding, the lack of coordination between them and the duplication of investigations have contributed to the lack of due diligence in the investigation." According to the State, the different complaints filed with several instances prove that the State respects the right to effective judicial protection and due process.

142. The Tribunal notes that as of the year 2002, the authorities opened a new investigation into the facts, at the request of the father of Mr. Anzualdo, who together with the father of another disappeared person, lodged a petition to reopen the investigation with the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves [FN182]. It fell upon the State to verify the reasons why it has not been possible to determine, up to the present, the fate of Mr. Anzualdo Castro, to locate his whereabouts, or to determine the corresponding criminal responsibility of the perpetrators, which the State did not do. Hence, it does not spring from the facts the reasons of the number and frequency of the changes made as to the authority in charge of the investigations: It spring from the evidence that said Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves became the Office of the Fifth Supra-Provincial Prosecutor [FN183], which was, in turn, deactivated and the duties of the parties to a suit redistributed, and therefore, the Office of the Third Supra-Provincial Criminal Prosecutor took over the investigation, under case file No. 04-2007 [FN184].

[FN182] Cf. Motion to reopen investigations into the abduction and forced disappearance filed by Félix Vicente Anzualdo Vicuña and Javier Roca Obregón before the Office of the Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves, of October 10, 2002 (record of evidence, volume V, appendix 14 to the Application, page 1767).
[FN183] Cf. Order issued by the Office of the Special Human Rights Prosecutor of May 7, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, pages 3011-3013).
[FN184] Cf. Order issued by the Office of the Special Human Rights Prosecutor of May 7, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, pages 3011-3013).

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143. In this sense, the Tribunal agrees with the representatives in that it is not clear that the changes of prosecutor's offices assigned to the investigation or the number of case -files opened, at the same time, by the different prosecutor's offices, favored the development and effectiveness of the investigation. On the contrary, its progress was hindered by the existence of segmented parallel inquiries regarding the alleged responsible and in which the authorities are investigating, also, different complex facts.

144. For example, on November 10, 2006 the Office of the Fifth Supra-Provincial Criminal Prosecutor decided to close the preliminary investigation against former President Fujimori Fujimori [FN185]. Nevertheless, after the filing of a motion for reconsideration [FN186] before the Superior Court, the Office of the Second Special Criminal Prosecutor for Organized Crime decided to vacate the appeal decision [FN187]. Moreover, it emphasized that the proceedings have remained for many years in the possession of different prosecutor's offices and pointed out that "to date, nor the police or the prosecution authority had carried out a meaningful, thorough, and conscientious preliminary investigation, as warranted in cases of alleged crimes against humanity." Therefore, it ordered the appropriate Provincial Criminal Prosecutor's Office to directly take over this investigation and adopt a series of measures [FN188]. On April 11, 2007 the Prosecutor's Office decided to expand the investigation and ordered the measures required by the Superior Court [FN189] .

[FN185] On November 10, 2006 the Office of the Fifth Supra-Provincial Criminal Prosecutor noted that the Special Criminal Chamber of the Supreme Court reported that there was a proceeding under way in that venue against Alberto Fujimori Fujimori for the crime of forced disappearance to the detriment of Kenneth Ney Anzualdo Castro, and two other people, which resulted in undue interference in judicial functions [Avocamiento Indebido] and, therefore, it decided "to close the investigation until the proceeding before the Court concludes or until the latter adopts an appropriate decision with respect to the alleged participation of other persons." Cf. Decision issued by the Office of the Fifth Supra-Provincial Criminal Prosecutor in the case file Nº 50-2002 of November 10, 2006 (record of evidence, volume V, Appendix 17 to the application, pages 1784-1785).

[FN186] A motion for reconsideration was immediately filed with the Superior Court against such decision of November 10, 2006 in which it was mentioned that the proceedings against the former President did not involve other alleged participates; and therefore both proceedings could be conducted. Cf. motion for reconsideration filed before the Office of the Fifth Supra-Provincial Criminal Prosecutor on November 28, 2006 (record of evidence, volume V, Appendix 18 to the application, pages 1787-1789).

[FN187] Cf. Decision issued by the Office of the Second Special Criminal Prosecutor for Organized Crime in case file Nº 02-2007 of March 20, 2007 (record of evidence, volume V, Appendix 19 to the application, page 1794).

[FN188] The Office of the Second Prosecutor ordered, among other measures, to take certain statements or "declarations"; collect information on the career and non-commissioned officers who were on duty October and December 1993; obtain certified copies of the evidence provided by the next -of -kin of the victims and procedural documentation that were related to the disappearance of Kenneth Ney Anzualdo Castro and Martin Javier Roca Casas, contained in the record of case 45-03 before the Special Chamber of the Supreme Court; amended signed

statement from Ricardo Manuel Uceda Pérez. Cf. decision issued by the Office of the Second Special Criminal Prosecutor for Organized Crime in the case file Nº 02-2007 of March 20, 2007 (record of evidence, volume V, Appendix 19 to the application, pages 1794- 1795).
[FN189] Cf. order issued by the Office of the Third Supra-Provincial Prosecutor of April 11, 2007 (record of evidence, volume VI, appendix 37 to the application, pages 1976-1977).
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145. This hindrance was also reflected on the several activities arisen as of 2005 [FN190] in relation to the request to transfer the proceedings to the Office of the Special Prosecutor for Human Rights, which was investigating into the complaints filed against Vladimiro Montesinos and other people involved [FN191]. That request had a favorable resolution and therefore, since May 7, 2008 that Prosecutor's Office is conducting the investigation [FN192].

[FN190] Cf. order issued by the Office of the Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves in case-file N° 50-2002 of April 13, 2005 (record of evidence, volume V, appendix 15 to the application, page 1778); motion for reconsideration filed before the office of the Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves in case file N° 50-2002 on May 3, 2005 (record of evidence, volume V, appendix 16 to the application, page 1782); order issued by the Office of the Fourth Prosecutor before the National Superior Criminal Court in case file N° 50-2002 on July 6, 2005 (record of evidence, Volume V, appendix 16 to the application, pages 1780-1781); request to transfer the preliminary investigation N° 04-2007 before the Office of the Special Prosecutor for Human Rights of April 4, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, pages 3023-3026); and order issued by the Office of the Third SupraProvincial Prosecutor on April 21, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, pages 3015-3030).
[FN191] Said Offices of Special Provincial Prosecutors were created on November 10, 2000 by the resolution of the Solicitor's General, in order to take up the investigations into the complaints filed against Vladimiro Montesinos Torres. After twenty days, by means of another resolution of the Solicitor's General, said Prosecutor's offices were awarded broader powers "to take up the investigation into any third parties that may have participated in the facts subject-matter of the investigation." Order issued by the Office of the Third Supra -Provincial Criminal Prosecutor on April 21, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, page 3018).
[FN192] Cf. Order issued by the Office of the Special Human Rights Prosecutor of May 7, 2008 (record of evidence, volume VIII, appendix 18 to the brief of pleadings and motions, pages 3011-3013).
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146. As to the investigations that link the then high-ranking government authorities to the forced disappearance of Mr. Anzualdo Castro, none of the two investigations had resulted in the prosecution and possible conviction of the responsible. In the proceedings against Montesinos, the investigation regarding Mr. Anzualdo Castro was consolidated in May 2008 (supra para. 145) and up to the present, no information about the progress of such investigation has been reported to this Court.

147. Moreover, the State pointed out that it was adopting the necessary measures to avoid impunity since the Office of the Provincial Special Prosecutor for Human Rights has filed a complaint for the alleged commission of the crime against humanity- forced disappearance (supra para. 12). As to that complaint, the representatives held that even though it is a progress, it does not include the perpetrators of the forced disappearance.

148. In this regard, according to evidence, on December 17, 2008 this Prosecutor's Office arraigned several accused people for the alleged crime against humanity – forced disappearance- to the detriment of the society and Kenneth Ney Anzualdo Castro, among other people, and for breach of the peace as conspiracy to commit a crime against the State [FN193]. On March 31, 2009 it was issued the order to commence the preliminary proceedings. Regarding this new investigation against Montesinos, there is no information either about the measures adopted. In this way, the State has not provided a satisfactory explanation about the need, opportunity and relevance of instituting a new criminal proceeding for the same facts that were being investigated.

[FN193] Cf. complaint of the Office of the Special Provincial Prosecutor on Crimes against Humanity of December 17, 2008 (record of evidence, volume XII, appendix to the brief of the State of March 26, 2009, pages 4402-4422).

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149. As to the extradition proceeding and investigation conducted against former President Fujimori, this Court notes that even though the request for extradition was declared admissible by the President of the Special Criminal Chamber of the Supreme Court of Justice of Peru for the crime of forced disappearance to the detriment of Mr. Anzualdo Castro et al [FN194], the Supreme Court of Chile tuned down the request in relation to the crimes of abduction committed at the "basements of the SIE" [FN195]. In this regard, the Tribunal has not received information about the impact that said decision would have on the development of the investigation conducted in Peru for the case of Mr. Anzualdo.

[FN194] Cf. order for preliminary proceedings to commence issued by the Office of the Investigating Magistrate of the Permanent Criminal Chamber of the Supreme Court of Justice of Peru of January 5, 2004 (record of evidence, volume V, appendix 6 to the application, pages 1698-1704); final report of the Investigating Magistrate's Office of September 1, 2004 (record of evidence, volume VII, appendix 39 to the application, pages 2421-2427); opinion N° 167-2004-MP-FSC of the Supreme Attorney's Office for the Second Instance before the Special Criminal Chamber of the Supreme Court of December 10, 2004 (record of evidence, volume VII, pages 2429-2435 and 2478/2479); Report of the Ad Hoc Attorney General's Office for the cases of Fujimori- Montesinos of July 16, 2007 (record of evidence, volume V, appendix 35 to the application, pages 1900-1901); request for identification of Kenneth Ney Anzualdo Castro as aggrieved party presented on November 29, 2005 (record of evidence, volume V, appendix 21 to the application, pages 1797-1799); notice of the court order to expand of February 8, 2006 (record of evidence, volume V, appendix 22 to the application, page 1801); Request to Expand

the Active Extradition, filed by the Ad Hoc Attorney General's Office of March 21, 2006 (record of evidence, volume VIII, Appendix 16 to the brief of pleadings and motions, pages 2909-2936); Decision of the Special Criminal Chamber of the Supreme Court of Justice of the Republic, of May 5, 2006 (record of evidence, volume X, Appendix 31 to the response to the application, pages 4068-4073); Supreme Final Decision of the First Transitory Criminal Chamber of the Supreme Court of Justice of June 21, 2006 (record of evidence, volume V, appendix 1 to the application, pages 1598-1613); decision of the First Transitory Criminal Chamber of the Supreme Court of Justice of July 13, 2006 (record of evidence, volume V, appendix 23 to the application, pages 1803-1806) and opinion of the prosecutor N° 038-2007-2°FSP-MP-FN of July 31, 2007 (record of evidence, volume VII, appendix 39 to the application, pages 2496- 2527).
[FN195] On June 7, 2007 the State Attorney to the Supreme Court of Chile concluded that the Supreme Court of Chile should dismiss the request for extradition of Fujimori filed by the Government of Peru for the crimes of abduction "Basements of SIE." In the decision of September 21, 2007 the Second Criminal Court of the Supreme Court of Chile decided to reject the extradition regarding the case of forced disappearance of Kenneth Ney Anzualdo Castro inasmuch as "the existence of illicit acts, subject-matter of said requests, is not justified." Cf. report of the State's Attorney Office to the Supreme Court of Chile of June 7, 2007 (record of evidence, volume VIII, appendix 17 to the brief of pleadings and motions, pages 2938-2992) and excerpts of the judgments of July 11, 2007 and September 21, 2007 (record of evidence, volume VIII, appendix 17 to the brief of pleadings and motions, pages 2993-2008) and volume X, appendix 31 to the response to the application, pages 4090-4094).
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150. The Court deems appropriate to recall that, in the terms of the obligation to investigate, Peru must ensure the effective identification, investigation, prosecution and, if applicable, punishment of all the perpetrators and instigators of the forced disappearance of Mr. Anzualdo Castro; to such end, it shall not resort to the application of legal concepts that threaten the pertinent international obligations.

151. Finally, the representatives pointed out that no action has been carried out in any of the investigations in order to shed light on the whereabouts of Mr. Anzualdo Castro or in order to locate his mortal remains. Therefore, based on the report of the expert witness Baraybar, the representatives emphasized the negligence of the authorities in not conducting a DNA testing on the remnants of bones found in the incinerators of the basements of the SIE and they also highlighted the fact that it is unknown who is in charge of taking care of such remains at present. In addition, the State presented, in the final argument, a directive that regulates the investigation conducted by the prosecuting authority as a result of the finding of human remains related to grave human rights violations [FN196].

[FN196] Internal directive of the Public Prosecutor's Office Nº 011-2001-MP-FN of September 8, 2001 (Record of evidence, volume XIII, appendix to the final arguments of the State, pages 4526 to 4531).
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152. This Court notes that the investigations initiated since the year 2002 are based on new information that indicates that Mr. Anzualdo was taken to the basements of SIE. However, from the information available regarding the existence of incinerators and human bone remains of said office [FN197], it does not spring that the investigating authorities have adopted measures to compare the remains found with the DNA of the relatives of the people that could have been in said basements [FN198].

[FN197] On August 25, 2004 a criminal expert assessment, related to the inspection and taking of sample to determine the elements incinerated in the Second Basement (Almacén de recuperacion ingenieria - Warehouse of engineering recovery) of the Army's Intelligence Service, was forwarded to the Office of the Investigating Magistrate of the Special Criminal Chamber of the Supreme Court of Justice. Said expert assessment reveals that it was determined, by means of a forensic anthropologic examination, that one of the samples taken on June 11, 2004 at the internal base of the incinerator of the second basement of the Intelligence Service corresponds to a human bone structure. Cf. Official letter Nº 4237-04-DIRCRI-DIVLACRI-DEPING-PNO of August 19, 2004 (Record of evidence, volume VIII, Appendix 14 to the brief of pleadings and motions, pages 2831 to 2864).

[FN198] The expert witness Baraybar emphasized, regarding the inspection conducted in the year 2004, that "the approach of the forensic investigation in cases of forced disappearance is very specific and different from the approach applied to normal criminal investigations, which is basically the best approach for this kind of examination, that is, to basically focus on the object; the object of the study, finally, is the recovered object and not the context; but, no samples of the relatives were taken; no DNA was processed; no inspections were conducted in the area where the remains could be located; no universe of probable victims was determined; there are many levels, let say, together, but time is the enemy." Expert opinion rendered by expert witness José Pablo Baraybar Do Carmo at the public hearing held before the Inter-American Court on April 2, 2009.

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153. In short, even though the State has conducted important investigations to get to the bottom of the complex structure of the people involved in the planning and execution of grave human rights violations committed during the internal conflict of Peru, these investigations have not been oriented until recently and within certain limitations, to the determination of the participation of said structures in the forced disappearance of Mr. Anzualdo Castro.

154. To conclude, the principle of due diligence required that the proceedings be carried out taking into account the complexity of the facts, the context in which they occurred, and the patterns that explain why the events occurred, ensuring that there were no omissions in gathering evidence or in the development of logical lines of investigation [FN199]. In this sense, it is essential the adoption of all the measures necessary to view the systematic patterns that allowed the commission of serious human rights violations as well as the mechanisms and structures through which impunity was ensured.

[FN199] Cf. Case of the Serrano Cruz Sisters V. El Salvador. Merits, Reparations and Costs; supra note 90, para. 88 and 105, and Case of the Rochela Massacre V. Colombia, supra note 13, para. 158.

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c) Regarding the reasonable time in the length of the proceedings

155. As to the reasonable time of length of the proceedings, the Commission as well as the representatives alleged that the State violated Article 8(1) of the Convention. La primera resaltó el tiempo que han tardado los procesos sin resultados tangibles respecto de los responsables, la falta de evacuación de pruebas y la posición activa de los familiares desde la primera denuncia. Los representantes sostuvieron que este no es un caso complejo, por tratarse de la desaparición de una única persona bajo una práctica sistemática y un modus operandi establecido, aunque reconocieron que la participación de agentes estatales y el ambiente de impunidad y miedo que imperaba en la época de los hechos podían entrañar cierta complejidad, lo que no justifica una falta o retardo.

156. Article 8(1) of the American Convention establishes as one of the elements of due process that the courts decide on the cases submitted to them within a reasonable time. In that respect, the Court found that is necessary to take into account four aspects to determine the fairness of such term: a) the complexity of the matter, (b) the procedural activities carried out by the interested party, (c) the conduct of judicial authorities [FN200], and the impairment to the legal situation of the individual involved in the proceeding [FN201]. However, the appropriateness of applying these criteria to determine the reasonability of the term of a proceeding depends of the circumstances of each case [FN202], since in cases such like this, the State's duty to wholly serve the purposes of justice prevails over the guarantee of reasonable time [FN203]. In any event, it falls upon the State to demonstrate the reasons why a proceeding or several proceedings have lasted more than a reasonable time to be conducted. Otherwise, the Court has broad powers to make its own analysis of this matter.

[FN200] Cf. Case of Genie Lacayo V. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 77; Case of Heliodoro Portugal V. Panamá, supra note 58, para. 149; Case of Bayarri V. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C Nº 187, para. 107.

[FN201] Cf. Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 155 and Case of Kawas Fernández V. Honduras, supra note 14, para. 112.

[FN202] Cf. Case of the "Maripirán Massacre" V. Colombia, supra nota 39, para. 214; Case of the Pueblo Bello Massacre V. Colombia, supra note 75, para. 171. In a similar case, Case of García Asto and Ramírez Rojas V. Perú. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 167.

[FN203] Cf. Case of La Cantuta V. Peru, supra note 58, para. 149.

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157. In the instant case, the Court notes that the inquiry into the facts was of a certain complexity, considering not only that it dealt with a forced disappearance in which the

perpetrators tried to eliminate any trace or evidence, but also the refusal to provide information about the whereabouts and the number of possible responsible. Nevertheless, in the first period, the judicial authorities acted negligently and without the promptness that the facts required (supra paras. 134 and 140). At all times, the next-to-kin adopted an active position, informing the authorities about all they knew and expediting the investigations. Regarding the new investigations opened as of the year 2002, it is not possible to disassociate the hindrances and delays verified in the prior period, which led the investigations and proceedings to last more than 15 years since the occurrence of the facts. Such proceedings are still opened, without having the authorities determined the fate or whereabouts of the victim, as well as prosecuted and possible punished the responsible, which, in whole, has exceeded the term that may be considered reasonable to such effects. Based on the foregoing, the Court considers that the State failed to comply with the requirements of Article 8(1) of the Convention.

C. On the lack of adaptation of domestic legislation (Article 2 of American Convention in relation to Articles I, II and III ICFDP)

C.1 Amnesty Laws

158. The Commission requested the Court to declare that the State failed to comply with its obligation to adapt domestic legislation, given the fact that, according to it, “while amnesty laws 26.492 and 26.479 remained in force, the investigations in connection with this complaint, though provisionally closed until new evidence should come to light, were in effect terminated, because said laws made it impossible to proceed with the investigation or prosecute State agents.” In this way, it alleged that those laws were a delaying factor in the investigations and an obstacle to shed light on the circumstances of the disappearance, while they were in force, which is attributable to the State.

159. Regarding its subsequent application, the representatives asserted that “by virtue of the Court’s determination of incompatibility of said laws with the Convention, those laws have not been applied and have no legal effect in Peru”; therefore, they agreed with the Commission in that it seems unnecessary to adapt the domestic legislation to additional measures in order to effectively guarantee the elimination of the judicial effects of the amnesty laws. However, while they were applied and produced effects, “the Peruvian State violated the rights to a fair trial and judicial protection in relation to the obligation to protect and guarantee and to adapt the domestic legislation to the international standards, to the detriment of Kenneth Ney Anzualdo Castro.”

160. The State did not submit allegations in this regard.

161. In relation to the general duty of each State Party to adjust its domestic law to the provisions of the Convention, enshrined in Article 2 of the American Convention, [FN204] for the purposes of this debate, it is necessary to recall that the Court has already analyzed the content and scope of the amnesty laws Nº 26.479 and Nº. 26.492 in the case of Barrios Altos vs. Perú, by which in the Judgment on the merits of March 14, 2001, it concluded that amnesty laws "are incompatible with the American Convention [...] and consequently, lack legal effect" [FN205]. The Court interpreted the Judgment on the Merits delivered in that case in the sense that the “enactment of a law that is manifestly incompatible with the obligations undertaken by a

State Party to the Convention is per se a violation of the Convention for which the State incurs international responsibility [and] given the nature of the violation that amnesty laws No. 26.479 and No. 26.492 constitute, the effects of the decision in the judgment on the merits of the Barrios Altos Cases are general in nature" [FN206]. This was repeated by the Court in the case of La Cantuta [FN207].

[FN204] Cf. Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) V. Chile. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 87; Case of Heliodoro Portugal V. Panamá, supra note 58, para. 179; and Case of La Cantuta V. Perú, supra note 58, para. 171 and 172.
[FN205] Cf. Case of Barrios Altos V. Peru, supra note 125, para. 41 to 44 and operative paragraph four.
[FN206] Cf. Case of Barrios Altos V. Peru. Interpretation of the Judgment on the Merits. Judgment of September 3, 2001. Series C No. 83, para. 18 and operative paragraph two.
[FN207] Cf. Case of La Cantuta V. Peru, supra note 58, para. 165-189.

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162. In the instant case and in light of the temporal scope in which said laws were applied, it spring that from the investigations analyzed, the only ones on which said laws could have produced an effect were the investigations conducted before the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao and the writ of habeas corpus. The remaining investigations were opened as of the year 2002. Nevertheless, from the actions taken in the proceedings mentioned, it does not spring that the enforcement of amnesty laws would justify the omissions or negligent acts. On the contrary, in 1999 the Office of the Fifth Prosecutor ordered expanded measures and to continue with the investigations (supra para. 134). In this way, it is not clear whether, in the instant case, there were specific acts to which the amnesty laws were applied, which had a real incidence in the investigations carried out. It has neither been alleged nor proven that, after the year 2001, the State stopped adopting the pertinent measures to eliminate the effects that these laws could somehow produce.

163. Without detriment to the foregoing, it is pertinent to recall that, in the context in which the events occurred, that law constituted a general obstacle to the investigations into serious human rights violations in Peru. In this regard, this Tribunal has already declared in the case of La Cantuta V. Perú that during the time in which the amnesty laws were applied, the State breached its obligation to adjust its domestic law to the Convention, pursuant to Article 2 thereof; as a result, since they were declared incompatible ab initio with the Convention such "laws" have not been capable of having effects, nor will it have them in the future [FN208].

[FN208] Cf. Case of La Cantuta V. Peru, supra note 58, para. 189.

C.2 Classification of the crime of forced disappearance

164. The representatives alleged that the State has failed to comply with its obligation to appropriately classify the crime of forced disappearance. They based their argument on that, in the case of Gómez Palomino, the Court ordered the State to adopt the measures necessary to amend its criminal legislation so as to adapt it to the international standards within a reasonable time, in spite of which, up to the date, Article 320 of the Criminal Code has not been modified and it is still being applied by the domestic courts, "with serious implications for the proceedings instituted against people accused of forced disappearance in Peru." The Commission did not present any claim in that respect. Moreover, the State only pointed out that the Congress of the Republic of Peru would be adopting the amendment of said law.

165. As to the forced disappearance of people, the duty to adjust the domestic legislation to the provisions of the American Convention implies the autonomous classification of the crime and the definition of the punishable acts that make it up. In the case of Gómez Palomino, the Court had the opportunity to examine and render a decision on the adaptation of the criminal definition of forced disappearance in force under the Peruvian legislation since the year 1992 to the text of the American Convention and the ICFDP [FN209].

[FN209] At that time, the Court deemed that, as to the wrongdoers and the refusal to acknowledge the deprivation of liberty and to disclose the fate or whereabouts of the detained person, the classification of Article 320 of the Criminal Code was incomplete, given the fact that it did not contain all the forms of criminal involvement provided in Article II of the Inter-American Convention on Forced Disappearance of Persons, this is, state officials or individuals; it did not include within its elements, the refusal to acknowledge the deprivation of liberty or to provide information about the fate or whereabouts of detained persons and leaving no trace or evidence; finally, while the phrase "duly proven disappearance" complicates statutory "construction" thereof, since it was not possible to know whether such due proof must precede the criminal report or complaint or who should produce such proof either: the victim itself or his or her next-of-kin, or the State. Cf. Gomez Palomino V. Peru, supra note 63, paras. 98-110.

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166. In the instant case, the Court deems that no specific connection between the lack of effectiveness, diligence and completeness in the investigations and the unsuitability of the criminal type of forced disappearance to the conventional parameters has been proven. It is noteworthy that the investigations carried out by the authorities have dealt with the facts and framed them within the crime of forced disappearance, considering even its insufficient content; none of the decisions prove that, due to that incorrect classification, the State's Attorney have shifted the burden of the proof onto the petitioners. Hence, it seems not possible for the Court to note, and the representatives neither specifically assert it, that in the instant case the incorrect classification had been a specific element that hindered the effective development of the investigation or proceedings instituted due to the forced disappearance of Mr. Anzualdo Castro.

167. Without detriment to the foregoing, so long as that criminal law is not correctly adapted, the State continues failing to comply with Articles 2 of the American Convention and III of the ICFDP [FN210].

[FN210] Cf. Case of Gómez Palomino V Perú. Monitoring Compliance with Judgment. Order of the Inter-American Court of July 1, 2009, considering clauses 29-32.

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168. In the instant case, more than 15 years have elapsed since the forced disappearance of Mr. Anzualdo Castro, yet the whole truth about the facts or his whereabouts has not been determined. Since the moment of his disappearance, stat agents have adopted measures to hide the truth of what happened: apart from the use of the secret detention center in the basements of SIE, it has been possible to verify the lack of diligence in the investigations, specially due to the initial decision to close the criminal investigation, the groundless rejection of the writ of habeas corpus and the lack of prosecution of all the perpetrators and participants of the facts. The Tribunal finds that the domestic criminal proceedings have not provided effective recourses to determine the fate or whereabouts of the victim, or to guarantee the right to access justice and know the truth, by means of the investigation and possible punishment of the responsible and the full reparation of the consequences that resulted from the violations. The existing legal framework, after the disappearance of Mr. Anzualdo Castro, has not favored the effective investigation into the facts.

169. Based on the foregoing reasons, the Court concludes that the State violated the rights embodied in Articles 8(1) and 25(1) of the American Convention, in conjunction with Articles 1(1) and 2 therein and I(b) and III of the ICFDP, to the detriment of the next-of-kin of Mr. Anzualdo Castro.

VIII. REPARATIONS (Application of Article 63(1) of the Convention) [FN211]

[FN211] Article 63(1)
If the Court finds that there has been a violation of a right or freedom protected by [this] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

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170. It is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation [FN212]. All aspects of this obligation to make reparations are regulated by international law [FN213]. The Court has based its decisions in this particular subject on the provisions of Article 63(1) of the American Convention.

[FN212] Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C Nº. 7, para. 25; Case of Escher et al. V. Brazil, supra note 6, para. 221;

case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 108.
[FN213] Cf. Case of Aloeboetoe et al. V. Surinam. Merits. Judgment of December 4, 1991. Series C No. 11, para. 44; Case of Escher et al. V. Brazil, supra note 6, para. 221; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 108.
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171. In the response to the application, the State has indicated that it is not its responsibility to repair the injured party. Despite having expressed its pain for the victims, the State indicated its generic rejection of the reparations requested by the Commission and the representatives, given that "if the Court declares the State's responsibility, these forms of compensations shall follow a domestic guideline of reparation given by the Reparations Committee who is acting under certain criteria." In the same line of thought, the State pointed out, regarding the measures of satisfaction and guarantees of non-repetition, that any decision of the Court in this regard "must analyze what could be developed in the Peruvian society, who is living a reconciliation process."

172. The Court values that Peru counts on a Full Reparation Plan, by which it acknowledges collective and symbolic reparations in the field of health, education, housing, and restitution of rights as well as economic reparation for the victims of the violence during the conflict. [FN214] Furthermore, the Court notes that the representatives observed, and the State did not contest it, that up to the date, Kenneth Ney Anzualdo Castro is not registered with the Victims' Registry [FN215], which constitutes a pre-requisite for the recognition of the right to obtain individual reparations [FN216], and his next-of-kin have not been capable of receiving reparations within the framework of that system.

[FN214] The Full Reparations Plan was approved by Law 28.592 on July 29, 2005.
[FN215] See Electronic consultation to the Victims' Registry [Registro Único de Víctimas]. Available at http://www.registrodevictimas.gob.pe/ruv/ConsultasLinea/Libro01/ConsultaWebInscritosRUVLibro01.aspx
[FN216] The Victims' Registry is the body in charge of the identification and individualization of the victims that shall be benefited from the programs of the Full Reparation Plan.
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173. In consideration of the violations of the American Convention and the Inter-American Convention on Forced Disappearance of Persons so declared in the preceding chapters, the Tribunal shall address the requests for reparations made by the Commission and the representatives, as well as the State's observations thereof, in light of the criteria embodied in the Court's case-law in connection with the nature and scope of the obligation to make reparations [FN217], in order to adopt the measures required to redress the damage caused to the victims.

[FN217] Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs, supra note 212, para. 25-27; Case of Garrido and Baigorria V. Argentina. Reparations and Costs. Judgment of

August 27, 1998. Series C No. 39, para. 43; Case of “White Van” (Paniagua Morales et al.) V. Guatemala; Reparations and Costs; supra note 9, para. 76-79.

A) Injured Party

174. The Commission requested the Court to consider Mr. Anzualdo Castro, in his capacity as direct victim of the forced disappearance, as beneficiary of the right to reparation and it identified his father, mother and siblings as the beneficiaries. The representatives agreed with the Commission in that regard and the State did not refer to this specific aspect.

175. The Court considers as "injured party”, under the terms of Article 63(1) of the Convention, Kenneth Ney Anzualdo Castro; his father, Félix Vicente Anzualdo Vicuña; his mother, Iris Isabel Castro Cachay de Anzualdo (dead); his sister, Marly Arleny Anzualdo Castro and his brother, Rommel Darwin Anzualdo Castro, all of them as victims of the facts that constituted the forced disappearance of Mr. Anzualdo Castro. Therefore, they shall be beneficiaries and shall be entitled to the reparations as may be set by the Tribunal as compensation for pecuniary and non-pecuniary damage.

B) Obligation to investigate into the facts and identify, prosecute and, if applicable, punish the responsible

B.1) Investigation, determination, prosecution and, if applicable, punishment of all the perpetrators and instigators.

176. The Inter-American Commission requested the Court to order the State to conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify and punish all the perpetrators and instigators. The representatives also requested the Court to order the State to guarantee the next-of-kin of the victim "the full access and capacity in all the procedural instances” and to publicly and broadly disseminate the results of the investigations.

177. In the final oral arguments, the representatives considered it was convenient for the Court to decide over “the specific obligations of the States Parties to the Convention to investigate and punish the crimes against humanity and, specially, the forced disappearance.” Likewise, they requested the Court to recall its case-law regarding the “incompatibility of amnesty laws and other factors excluding responsibility with the American Convention”, since in “November 2008, Bills Nº 2844/2008 and 2848/2008 were presented to the Congress, which constitute a serious threat to the fight against impunity in Peru.” They pointed out that it was confirmed by the witness Carlos Rivera Paz, who informed that "the president of the Defense Commission of the Congress [...] has publicly proposed a new amnesty law for military officers being investigated and accused of having committed human rights violations” [FN218].

[FN218] Cf. Affidavit of Carlos Martin Rivera Paz of March 17, 2009 (record of evidence, volume XI, page 4379).

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178. In that regard, the State indicated that "it is respectful of the human rights and the due process and the guarantees of access to justice [...] [therefore] its goal is to individualize the person or persons who were the perpetrators of the forced disappearance of Kenneth Ney Anzualdo Castro." In order to do so, it recalled the existence of a criminal proceeding that is pending.

179. The State is under a duty to use all means available to fight the situation of impunity surrounding the instant case, as impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin, who are entitled to learn about truth of the facts. [FN219] Therefore, the acknowledgment and the exercise of this right to know the truth, in a specific situation, becomes a relevant means for redress (supra para. 118). [FN220]

[FN219] Cf. Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 174; Case of Kawas Fernández V. Honduras, supra note 14, para. 190; and Case of Heliodoro Portugal V. Panamá, supra note 58, para. 244.
[FN220] Cf. Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 181; Case of Kawas Fernández V. Honduras, supra note 14, para. 190; Case of Tiu Tojín V. Guatemala., supra note 59, para . 103.

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180. As with other cases, [FN221] the Court views as a significant first step towards reparation the publication of Peru's Truth and Reconciliation Commission Final Report, which includes the case of Mr. Anzualdo Castro, as effort that has contributed to the search for and determination of the truth in a historical period of Peru. Without detriment to the foregoing, the Court considers it is appropriate to establish that the recognition of "historical truths" contained in that report should not be understood as a substitute to the obligation of the State to establish the truth and ensure the judicial determination of individual and state responsibilities through the corresponding jurisdictional means [FN222]. This is how the State understood it when it kept open the investigations after the report was issued.

[FN221] Cf. Case of La Cantuta V. Peru, supra note 58, para. 223 and 224.
[FN222] Cf. Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 128; Case of Almonacid Arellano et al. V. Chile, supra note 9, para. 150.

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181. Based on the foregoing, as well as the case- law of this Tribunal [FN223], the Court orders the State to effectively carry out the criminal proceedings that are in process and any future proceedings in relation to the forced disappearance of Kenney Ney Anzualdo Castro, in order to determine the corresponding responsibilities of the perpetrators and instigators for the facts of the case and to apply the appropriate legal provisions. The State must conduct and conclude the corresponding investigations and proceedings within a reasonable time, in order to establish the whole truth of the facts, in light of the criteria mentioned regarding the investigations in cases of forced disappearance (supra para. 135).

[FN223] Cf. Case of Baldeón García V. Perú. Merits, Reparations and Costs. Judgment of April 6, 2006; Series C No. 147, para. 199; Case of Kawas Fernández V. Honduras, supra note 14, para. 191; Case of Perozo et al. V. Venezuela, supra note 6, para. 414.

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182. The Court recalls that, in compliance with this obligation, the State must remove all obstacles, both factual and legal, that hinder the effective investigation into the facts and the development of the corresponding legal proceedings, and use all available means to expedite such investigations and proceedings, in order to ensure the non-repetition of facts such as these. Specially, this is a case of forced disappearance that occurred within a context of a systematic practice or pattern of disappearances perpetrated by state agents; therefore, the State shall not be able to argue or apply a law or domestic legal provision, present or future, to fail to comply with the decision of the Court to investigate and, if applicable, criminally punish the responsible for the facts. For this reason and as ordered by this Tribunal since the delivery of the Judgment in the case of Barrios Altos V. Peru, the State can no longer apply amnesty laws, which lack legal effects, present or future (supra para. 163), or rely on concepts such as the statute of limitations on criminal actions, res judicata principle and the double jeopardy safeguard or resort to any other measure designated to eliminate responsibility in order to escape from its duty to investigate and punish the responsible [FN224].

[FN224] Cf. Case of Barrios Altos V. Peru. Merits, supra note 141, para. 41 to 44; Case of Cantoral Huamaní and García Santa Cruz V. Peru, supra note 121, para. 190; and Case of La Cantuta V. Perú, supra note 58, para. 187.

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183. Pursuant to the case-law of this Tribunal [FN225], during the investigation and prosecution, the State must ensure full access and procedural capacity of the victim's next-of-kin in all the stages of this investigation, in accordance with the domestic law and the rules of the American Convention. In addition, the results of the proceeding must be made known to the public, for the Peruvian society to know the truth of the instant case, as well as its responsible [FN226].

[FN225] Cf. Case of Caracazo V. Venezuela. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 118; Case of Kawas Fernández V. Honduras, supra note 14, para. 194; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 233.

[FN226] Cf. Case of the Caracazo V. Venezuela. Reparations and Costs. Supra note 225, para. 118; Case of Kawas Fernández V. Honduras, supra note 14, para. 194; Case of Valle Jaramillo et al. V. Colombia, supra note 145 para. 233.

B.2) Determination of the whereabouts of Kenneth Ney Anzualdo Castro

184. The Inter-American Commission requested the Court to order the State to "avail itself of all means necessary to investigate, identify and disclose the whereabouts of Mr. Kenneth Ney Anzualdo, or "his remains", in which case the State shall deliver his remains to his next- of- kin and should this not be possible, "provide them with corroborated and convincing information regarding the whereabouts thereof." The representatives requested that the State complies with the foregoing, bearing in mind certain procedures and technical criteria. The State did not submit specific allegations in this regard.

185. The Tribunal recalls that the whereabouts of Mr. Anzualdo Castro has still not been established; as a consequence, the State must, as a means for redress of the right to truth of the next-of-kin [FN227], immediately proceed to search for and locate him or his mortal remains, by means of a criminal investigation or another effective and appropriate procedure (supra párr. Should the mortal remains be found, they must be delivered to the next-of-kin, prior genetic verification of blood relationship, as soon as possible and at no cost. Also, the State must cover the burial expenses, in common agreement with the next-of-kin.

[FN227] Cf. Case of the Caracazo V. Venezuela. Reparations and Costs. Supra note 225, para. 122 and 123; Case of Ticona Estrada V. Bolivia; supra note 63, para. 84; and Case of La Cantuta V. Peru, supra note 58, paras. 231 and 232.

B.3) Criteria to identify the persons that disappeared during the internal conflict

186. The Commission as well as the representatives considered it was relevant the approach made by the expert witness Baraybar, in relation to the adoption of a public policy tending to identify and determine, "in an standardized manner", the universe of people who disappeared during the conflict- not definitive so far-, to continue searching for the remains as well as to establish a bank of genetic data that would allow the possible delivery of such remains to the victims' next-of-kin.

187. The State mentioned that there is, currently, "a law regarding the investigation carried out by the prosecuting authorities in relation to the findings of mortal remains in graves"; it specifically furnished the internal Directive Nº 011-2001-MP-FN, issued by the Attorney's Office on September 8, 2001. In addition, the State alleged that between 2006 and 2009, the "Specialized Forensic Team at the National Level of the Public Prosecutor's Office has participated in the exhumation of a hundred and four (104) clandestine graves." Furthermore, it informed that the "Public Prosecutor's Office has executed three Projects with the United States Development Program (UNDP) that strengthen the work of the Offices of the Special Prosecutors on Forced Disappearances, Extrajudicial Executions and Burials, which have been carried out up to the present" [FN228]. In addition, the State has submitted the Final Report of the Project 00014429-PER/02/U39 on the "Strengthening of the Office of the Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Burials."

[FN228] Cf. supplemental argument of the Peruvian State, according to which the projects are the following: Project Nº 00046682 “Support of the Spanish Agency for International Cooperation (AECI) to the Offices of Special Prosecutor on Forced Disappearance, Extrajudicial Executions and Burials”; Project Nº 00048665 “Burials and Identification of Disappeared Victims and Legal Recourse of the corresponding Criminal proceedings.” Project Nº 00049629 “Implementation of the DNA Laboratory for the Office of the Special Prosecutor on Burials", in charge of the National Office of the Institute of Legal Medicine.
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188. The Court notes that, in its expert examination, expert witness Baraybar emphasized some drawbacks in the investigations it furnished; he expressed that the State does not count on a public policy that allow elucidating the forced disappearances perpetrated between 1980 and 2000, and he highlighted there were serious methodological deficiencies, including the absence of activities aimed at "defining the universe of people that are being searched.” Moreover, the Tribunal views as a positive step the domestic legislation of the Office of the Attorney’s General as well as the measures adopted by the Public Prosecutor’s Office. In particular, the Court notes that there is no coincidence as to the number of forced disappeared perpetrated during the internal conflict in Peru, though it is clear that the percentage of victims identified so far, is very low in comparison to the total number announced by entities such as the Truth and Reconciliation Commission. [FN229]

[FN229] Cf. Final Report of the CVR, 2003, volume VI, chapter 1.2 Forced Disappearance of people by state agents, pages 73-81, available at http://www.cverdad.org.pe/ifinal/index.php
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189. This Tribunal urges the State to continue making all the necessary efforts and to adopt the administrative and legal measures and public policies that may correspond, to determine the people that disappeared during the internal conflict and, if applicable, identify their mortal remains by means of the most effective technical and scientific means and, as long as it is possible and scientifically advisable, by the standardization of the investigation criteria. To that end, the Tribunal considers it is necessary for the State to establish, among other measures it need to adopt, a system of genetic information to allow the determination and elucidation of the blood relationship of the victims, as well as their identification.

B.4) Appropriate classification of the crime of forced disappearance

190. The representatives requested the Court to order the State “the adjustment of the criminal definition of forced disappearance to the international norms, in particular, to Article II of the ICFDP, by means of the reform, as soon as possible, of section 320 of the Criminal Code.” The State alleged that “[t]he Congress of the Republic of Peru, through the Prior Ruling on the Bill Nº 1707/2007-CR, is classifying the ‘Crimes against the International Law on Human Rights and International Humanitarian Law’, among other aspects, mainly, it is modifying section 320 […] of the Criminal Code.”

191. The Tribunal views as a positive step what the State informed, but it recalls that said adaptation of the domestic legislation has been ordered in the Judgment delivered in the case of Gómez Palomino. In this regard, the Court repeats that the State must adopt all measures necessary to amend, within a reasonable period of time, its criminal law in order to render it consistent with the international standards on forced disappearance of persons, paying special attention to the provisions of the American Convention and the Inter-American Convention on Forced Disappearance. [FN230]

[FN230] Cf. Case of Gómez Palomino V. Peru, supra note 63, para. 149.

B.5) Training of justice administrators

192. The representatives requested the Court to order the State to establish a training process aimed at the operators of the specialized judicial system, at those who hear cases involving serious human rights violations and at the Ombudsman of Peru. In addition, they requested the Court to order the State to provide the judicial system with the necessary resources to carry out its functions. The State argued that "[t[he training of the Justices is provided by the Academia de la Magistratura [Magistracy Academy], an entity that completely fulfils its role", and presented the statistics about the progress made in the prosecution of 34 cases brought to justice by the National Criminal Chamber, upon the recommendation of the Truth and Reconciliation Commission.

193. The violations attributable to the State in the instant case were perpetrated by state agents. Moreover, the violations were heightened by the existence, at the time of the events, of a widespread context of impunity for serious human rights violations fostered by judicial operators. As a result, without detriment to the existence of training programs in Peru imparted by the Academia de la Magistratura for judicial officers, the Tribunal considers equally necessary for the State to implement, within a reasonable time, permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors. Said programs must mention, specially, the instant Judgment and the international human rights treaties and, specifically, the treaties related to forced disappearance of people and torture.

C) Measures of satisfaction and guarantees of non-repetition

C(1) Publication of the pertinent parts of the instant Judgment

194. The Court deems appropriate, as ordered in other cases [FN231], that the State shall publish at least once, in the Official Gazette and in another newspaper of wide national circulation, chapters 30 to 203 of this Judgment, with the corresponding headings and subheadings but without the corresponding footnotes and the operative paragraphs therein. To such end, said publications shall be made within six months following notice of this Judgment.

[FN231] Cf. Case of Barrios Altos V. Perú. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5 d); Case of Escher et al. V. Brazil, supra note 6, para. 239; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 141.

C(2) Public act of acknowledgement of international responsibility

195. The Inter-American Commission requested the Court to order the State to organize a public act of acknowledgment of international responsibility for the facts and to apology to the victim and his next-of-kin, in consultation with the latter, in order to make sure his memory is preserved. The representatives requested the Court to order the State that, in such public act, "the maximum authority, on behalf of the State, apology to the next-of-kin of Kenneth Ney Anzualdo Castro", who shall read the relevant parts of the Judgment and also, to disseminate such act by a public media with a high rating in Peru, for which the State must consult with the next-of-kin the details of the event."

196. In addition, the representatives recalled, in the final arguments, the words of Marly Arleny Anzualdo Castro, who, during the public hearing, requested the Tribunal "a place of memory for students like my brother." Consequently, the representatives requested the Court to order the State to, in common agreement with the next-of-kin and having previously coordinated with them, "vindicate his memory, by erecting a commemorative plaque in an appropriate place at Universidad Técnica de Callao."

197. The State considered it was necessary to wait for the results of the investigation conducted into the disappearance of Anzualdo Castro to carry out any kind of act. In addition, it objected to such request upon considering that the same "was unnecessary bearing in mind the goal of the Project of the 'Museum of Memory'", which would "represent with objectivity and displaying broad spirit, the tragedy that Peru went through as a consequence of the subversive activities of Sendero Luminoso and Movimiento Revolucionario Túpac Amaru during the last two decades of the twentieth century, in order to reveal to the Peruvian society the tragic consequences that result from ideological fanatism, breach of law and the violation of human rights, in order for our country not to recall such terrible experiences". [FN232] Likewise, the State "considers that the erection of a plaque, bust or another symbolic form of redress is not feasible at any public institution- like the Universidad del Callao"- considering the initiative described of the "Museum of Memory."

[FN232] Cf. Supreme Decision Nº 059-2009-PCM issued by the President of the Cabinet on March 31, 2009 (record of evidence, volume XIII, pages 4572 and -4573).

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198. The Court has determined, when analyzing the merits of the case, the seriousness of the facts and the violations committed in the instant case. In turn, the Court has noted that the description of the victim Kenneth Ney Anzualdo Castro as terrorist and his connection with the group Sendero Luminoso affected the investigations in relation to his forced disappearance and

that such description on the part of the State was kept in this proceeding, which did not refer to his guilt or innocence in certain facts. The Tribunal deems that the use of this language has contributed to the stigmatization and revictimization of Kenneth Ney Anzualdo Castro and his next-of-kin and they keep suffering because of that.

199. The Court recalls that the "criminal", "subversive" or "terrorist" threat invoked by the State in justification of certain activities carried out, may certainly constitute a legitimate reason for a State to deploy the security forces in specific cases. However, the State's fight against crime must always be exercised within limits and according to procedures that preserve both public safety and the fundamental rights of the human person subjected to its jurisdiction [FN233]. The conditions in a country, however difficult, do not release a State Party to the American Convention from its treaty-based obligations, which particularly prevail in cases such as the present one [FN234]. It is necessary to recall that, no matter the conditions of each State, International Law strictly prohibits torture, forced disappearance and summary and extralegal executions and said prohibition is a non-derogable norm of International Law [FN235].

[FN233] Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra note 11, para. 154; Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 96, and Case of the Miguel Castro-Castro Prison V. Perú. Merits, Reparations and Costs. Supra note 9, para. 240.
[FN234] Cf. Case of Bámaca Velásquez V. Guatemala. Merits, supra note 42, para. 207; Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 96; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 89.
[FN235] Cf. Case of Barrios Altos V. Peru, supra note 141, para. 41; Case of Zambrano Vélez et al. V. Ecuador, supra note 38, para. 96, and Case of the Rochela Massacre V. Colombia, supra note 13, para. 132.

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200. Consequently, the Court considers it is highly important the vindication of the name and dignity of Kenneth Ney Anzualdo Castro and his next-of-kin. The State's proposal to replace the act of acknowledgement with the "Museum of Memory" does not constitute an adequate individual measure of satisfaction, even though the Tribunal acknowledges that these types of initiatives are important in order to recover and build the historical memory of a society. Based on the foregoing, the Court considers it is necessary for the State to organize a public act of acknowledgment of responsibility for the forced disappearance of Kenneth Ney Anzualdo Castro and to apology to him and his next-of-kin, in particular for the treatment afforded to them since he disappeared. This act must be organized in the presence and, if possible, with the consent and cooperation of the relatives, if they wish so. High-ranking State's authorities must be present in the act, which must held within the term of six months, as from notice of this Judgment and the authorities shall make their best efforts to provide the most widely dissemination of the act in the media.

201. Furthermore, in order to preserve the memory of Mr. Anzualdo Castro and as a guarantee of non-repetition, the Court considers it is appropriate to accept the request of Marly Arleny Anzualdo Castro and to order the State to erect a plaque in the Museum of Memory, in the presence of the next-of-kin, if they wish so, by means of a public act. Given that the Museum is

being implemented, the erection of the plaque must be done within the term of two years, as of notice of this Judgment.

C.3) Medical and Psychological Treatment

202. The representatives requested the Court to order the State to provide the next -of -kin with medical and psychological treatment, free of charge, in order for them to have access to a quality medical center, widely known in the country and chosen by the victims, including the cost of the necessary medicines if applicable, after the medical evaluation of each one of them. The State objected to this request.

203. Upon verifying the suffering caused to the next-of-kin of Mr. Anzualdo Castro, the Tribunal deems it is convenient to order the State to provide medical, psychological and psychiatric treatment, free of charge, in an immediate, adequate and effective way, by means of specialized public health care institutions, to those next-of-kin who were considered victims by this Tribunal. The State shall take into account the sufferings of each one of the beneficiaries, for which it shall previously conduct a physical and psychological evaluation. Moreover, the treatment must be provided for as long as they need it and must include the medicines they may eventually require.

D) Reparation, compensations, costs and legal expenses

D(1) Pecuniary damage

204. The Court's case law has developed the concept of pecuniary damage and the cases in which compensation therefore is due. [FN236]

[FN236] This Tribunal has established that pecuniary damage involve "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts and the monetary consequences that have a causal nexus with the facts of the sub judice case." Cf. Case of Bámaca Velásquez V. Guatemala. Reparations and Costs, supra note 9. Para. 43; Case of Perozo et al. V. Venezuela, supra note 6, para. 405; and case of Ríos et al. V. Venezuela, supra note 6, para. 396.

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205. The Commission requested the Court to establish an appropriate amount of compensation, under the principle of equity, for pecuniary damage and it considered that the injured party is entitled to such claims. The representatives, in addition, presented specific requests as to pecuniary damage.

D.1.i) Consequential damages

206. As to the expenses incurred in order to determine the whereabouts of Kenneth Ney Anzualdo Castro, the representatives noted the activities carried out by his next-of-kin to try to locate him since the day of his disappearance, which involved travelling to different parts of the country; therefore, they incurred in expenses amounting to, approximately, US$ 900.00.

Moreover, the family spent US$ 1.000 in the hiring of an investigator's services. Even Mr. Rommel Anzualdo Castro economically helped the rest of the family from Spain. In turn, considering there are no receipts of the expenses incurred in light of the lapse of time, they request the Court to equitably determine the reimbursement for the expenses incurred by the entire family regarding the criminal complaint, the participation of the Truth and Reconciliation Commission and the judicial actions taken. Regarding the health expenses, the representatives also requested the Court to equitably determine the amount that may correspond for medical care and medicines for Mrs. Iris Isabel Castro Cachay de Anzualdo, who, after the disappearance of her son, had health problems that implied expenses. Moreover, they stated that the son of Marly Arleny Anzualdo had to go to psychological sessions on six occasions due to the disappearance of his uncle, and such expenses form part of the pecuniary damage. Finally, the representatives pointed out that the Anzualdo family was forced to close the small shop they run, from December 1993 to April 1994, which they considered it constituted damage to family wealth and requested the Court to equitably determine the compensation that may correspond in that regard.

207. The State asserted that "there is no evidence proving" the existence of the expenses alleged by the representatives.

208. The Court acknowledges that the activities and steps taken by the next-of-kin of Mr. Anzualdo Castro to try to locate him resulted in expenses that may be considered as consequential damage, in particular, the activities carried out before the different civil, administrative and judicial authorities. It is not proven the hiring of the investigator. Regarding what they mentioned about the business that the Anzualdo family had to close, the Tribunal acknowledges that it could have been related to the disappearance, though it is not clear that the main reason has been such disappearance; therefore, it is not appropriate to determine a specific amount in that regard.

209. Regarding the health treatment for the next-of-kin, even though they did not furnish any data as to the costs of the medical treatment of Mrs. Castro Cachay de Anzualdo, the Tribunal assumes that the family paid for them, in order to determine the compensation corresponding to pecuniary damage. As to the psychological treatment of the son of Marly Arleny Anzualdo Castro, the Court notes that no receipt or estimation in this connection was submitted; besides, the Commission and the representatives did not include him as beneficiary of the reparations in their claims. Therefore, the Tribunal shall not determine compensation in that regard.

210. The Court bears in mind that the Anzualdo family has not preserved the supporting documentation of the expenses mentioned, which is reasonable after the lapse of more than 15 years since the disappearance; therefore, the Court equitably determines the amount of US$ 15.000,00 (fifteen thousand dollars of the United States of America). This sum must be delivered to Mr. Félix Anzualdo Vicuña, who shall distribute it among the members of his family, as it may correspond.

D.1.ii) Loss of Income

211. The representatives considered that the standard of lost of income must be applied to the instant case, since Mr. Anzualdo Castro is still disappeared and, should he not be, he would live

for another 43 years, given that the life expectation at the time of the events was of 67.88 years; therefore, he would have finished his studies in the first semester of 1995 and he would have begun his career as economist in that same year. Even though the updated loss of income would amount to US$ 124.273, 00 based on the minimum salary in Peru from 1994 to 2008, the loss of income in the instant case would be of US$ 248.546,00 given the minimum salary of an employee in the area of financial intermediation and business in Peru [FN237]. Considering a deduction of 25% from such amount as personal expenditure, the representatives requested the Court to order the State to pay the next-of-kin of Kenneth Ney Anzualdo Castro the amount of US $186.410, 00 as loss of income.

[FN237] They pointed out, as criterion, the Monthly Basic Pay Table for the professional sector in Peru for the years 1995 to 2007, published by the International Labour Organization (record of evidence, volume VIII, pages 3041-3053).

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212. The State claims that it is not appropriate to cover the compensation for the victims and that, according to the formula used by the representatives, "a very long period was assumed as a period of constant income, which is not in accord with the reality of [such] country, taking into account unemployment." Furthermore, it claims that the causal nexus between the alleged violations and the loss of income is not proven.

213. The Court considers, as with previous cases on forced disappearance [FN238], that in this case in which the whereabouts of the victim is unknown, it is possible to apply the compensation criteria for the loss of income of the victim, which includes income that the victim would have received during his remaining life expectancy.

[FN238] Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs, supra note 212, para. 46 and 47; Case of Godínez Cruz V. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C N. 8, para. 44 and 45; Case of Benavides Cevallos V. Ecuador, supra note 111, para. 48 and Case of Castillo Páez V. Perú. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, para. 75.

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214. As has been proven, Kenneth Ney Anzualdo Castro was studying at the School of Economic Sciences of the Professional School of Economy of Universidad Nacional del Callao when he was made disappeared by state agents and he was 25 years of age at the time of the events (supra para. 33). He was finishing the last part of the university course and, therefore, he would have probably begun his professional career in the year 1995. As observed by the representatives, if he had graduated from economy, during his work life, Mr. Anzualdo Castro would have earned a salary according to his profession, that is, a higher salary than the minimum salary in force in Peru. The Court takes into account the date submitted by the representatives regarding the salaries in Peru and the life expectation of Mr. Anzualdo Castro at the moment of his birth, information that the State did not contest. It is irrelevant to consider, as the State intends, the unemployment rate in Peru, given the fact that otherwise there would be no base to

calculate what a university student would have not earned in the market. Based on the foregoing, the Court equitably determines the amount of US$ 140.000 (a hundred and forty million dollars of the United State of America) in favor of Kenneth Ney Anzualdo Castro, as loss of income as a result of his forced disappearance.

D(2) Non-pecuniary Damage

215. The Commission considered that the non-pecuniary damage as a result of the forced disappearance of Mr. Anzualdo Castro is evident, since it can be presumed that the injured party "went through an intense psychological suffering, anguish, pain and alteration in his life plans as a result of the state actions and the lack of justice."

216. The representatives alleged that it is reasonable to assume that Mr. Anzualdo was subjected to interrogatories and tortures. They claim that the amount of US $100.000 as moral damage is in line with the recent case-law of this Tribunal. Regarding the next-of-kin, the representatives argued that it is reasonable to presume that the parents of a victim of forced disappearance have morally suffered and that the inaction of the Peruvian authorities has caused "a profound suffering" to the next-of-kin. Therefore, they requested the Court to order the State to pay the amount of US$ 80.000,00 in favor of each one of the next-of-kin (supra para. 175).

217. The State sustains that it should not compensate the victims for non-pecuniary damage and that the amount requested for them is not in line with the recent case-law of the Court. As a result, it requests the Court to equitably determine the corresponding amount should it be necessary.

218. In it case-law, the Tribunal has determined several ways in which the non-pecuniary damage could be compensated [FN239]. The non-pecuniary damage may include both the suffering and distress caused to the direct victims, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms, to the living conditions of the victims or their families. Since it is not possible to assign the non-pecuniary damage a precise monetary equivalent, it may only be compensated by the payment of a sum of money for the full reparation of the victim or the assignment of goods or services, determined by the Court, applying judicial discretion and the principle of equity as well as the execution of acts or works of a public nature or repercussion, which have effects such as recovering the memory of the victims and commitment to the efforts to ensure that human rights violations do not happen again. [FN240] The first aspect of the non-pecuniary reparation is analyzed in this section and the second aspect has been analyzed in the previous section of this chapter.

[FN239] Cf. Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Perozo et al. V. Venezuela, supra note 6, para. 405; and Case of Rios et al. V. Venezuela, supra note 6, para. 396.
[FN240] Cf. Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Reparations and Costs, supra note 239, para. 84; Case of Perozo et al. V. Venezuela, supra note 6, para. 405; and Case of Rios et al. V. Venezuela, supra note 6, para. 396.

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219. The international case-law has repeatedly established that a judgment constitutes per se a form of reparation [FN241]. However, in view of the circumstances of the instant case, the sufferings that the violations have caused to the victim and his next -of -kin, the changes in the standards of living, and the other non-pecuniary consequences they bore, the Court deems it appropriate to award compensation for non-pecuniary damage, assessed on equitable grounds. [FN242]

[FN241] Cf. Case of Neira Alegría et al. V. Perú. Reparations and Costs. . Judgment of September 19, 1996. Series C No. 29, para. 56; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 133 and Case of Kawas Fernández V. Honduras, supra note 14, para. 184.
[FN242] Cf. Case of Neira Alegría et al. V. Perú. Reparations and Costs, supra note 241 para. 56; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 133 and Case of Kawas Fernández V. Honduras, supra note 14, para. 184.
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220. The Court considers, as in similar cases, [FN243] that the non-pecuniary damage sustained by Mr. Anzualdo Castro is evident, since it is human nature that a person subjected to forced disappearance suffers from deep pain, anguish, terror, impotence and insecurity. As a result, this damage need not be proven.

[FN243] Cf. Case of the 19 Tradesmen V. Colombia, supra note 156, para. 248; Case of La Cantuta V. Peru, supra note 58, para. 217; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 157,
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221. As to the next-of-kin, the Court repeats that the suffering caused to the victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim." [FN244] Also, the Tribunal has also considered that the suffering or death – in this case, the forced disappearance – of a person causes non-pecuniary damage to his daughters, sons, wife or companion, mother and father, which does not have to be proved [FN245].

[FN244] Cf. Case of Las Palmeras V. Colombia. Reparations and Costs. Supra note 145, para. 55; Case of La Cantuta V. Peru, supra note 58, para. 218; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 159.
[FN245] This criterion has been held in similar cases regarding the daughters, sons, wife or companion, mother, father, among other peoples. Cf. Case of the Pueblo Bello Massacre V. Colombia, supra nota 75, para. 257; Case of La Cantuta V. Perú, supra note 58, para. 218; and Case of Goiburú et al. V. Paraguay, supra note 59, para. 159.
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222. In light of the compensations determined by the Tribunal in other cases on forced disappearance of people, the circumstances of the instant case, the relevance, nature and seriousness of the violations committed, the suffering caused to the victims and the treatment afforded to them, the time elapsed since the disappearance, the denial of justice as well as the change of the life plans and the remaining non-pecuniary consequences that they suffered, the Court deems pertinent to equitably determine the amount of US$ 80.000,00 (eighty thousand dollars of the United States of America) in favor of Kenneth Ney Anzualdo Castro, as compensation for non-pecuniary damage. Likewise, the Tribunal equitably determine the amount of US$ 50.000,00 (fifty thousand dollars of the United States of America) in favor of the following persons: Félix Vicente Anzualdo Vicuña; Marly Arlene Anzualdo Castro and Iris Isabel Castro Cachay de Anzualdo and US$ 20.000 (twenty thousand dollars of the United States of America) in favor of Rommel Darwin Anzualdo Castro as non –pecuniary compensation.

D(3) Costs and Expenses

223. As held by the Court in prior cases, costs and expenses are included within the concept of reparation as enshrined in Article 63(1) of the American Convention [FN246].

[FN246] Case of Garrido and Baigorria V. Argentina. Reparations and Costs; supra note 217, para. 79; Case of Escher et al. V. Brazil, supra note 6, para. 255; case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Peru. Supra note 11, para. 146.

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224. The Commission requested the Court to order the State to pay "the costs and expenses incurred by the next-of-kin of the victim and their representatives in the processing of the case, both at the national level, as well as before the Inter-American system."

225. As to the expenses incurred by the Anzualdo family, the representatives noted that, in the initial stage of the investigations, the family hired the services of an attorney, who charged US$ 225.00 for each brief filed. They claim that the family has not preserved the receipts of said expenses and, therefore, they requested the Court to equitably determine such amount, taking into account that the proceedings were instituted more than 14 years ago. As to the proceeding before the Court, APRODEH and CEJIL have bore the total expenses derived from the production of evidence and ensuring the access of the victims during the public hearing before the Court, except for the payment of € 80 in which Rommel Anzualdo Castro incurred to send his affidavit to the representatives from Spain, where he lives.

226. They also requested the Court to equitably determine an amount for the expenses of APRODEH in its capacity as representatives. They note that APRODEH has represented the victim at the domestic as well as the international level since the year 1994 and that it has incurred in several administrative and honoria. In the final arguments, they indicated that they covered some of the expenses as part of its participation in the public hearing, including the trips of a representative and an expert witness. They requested the Court to equitably determine the expenses incurred by APRODEH.

227. Furthermore, they pointed out that CEJIL has represented the victim and his next-of-kin since April 13, 1998. They assert that it has incurred in administrative expenses, honoria as well as a travel made to collect evidence. In the brief of pleadings and motions, they requested the Court to equitably determine the amount of US$ 7.000,00 as expenses for CEJIL. In the final written arguments, they requested the Court to take into account the expenses incurred during the processing of the case before the Court, which they calculated that it amounts to approximately US$ 5.500,00.

228. The Tribunal has considered that "the claims of the victims or their representatives as to costs and expenses and the supporting evidence must be offered to the Court at the first occasion granted to them, that is, in the brief of requests and motions, without prejudice to the fact that such claim may be later on updated, according to new costs and expenses incurred during the processing of the case before this Court." [FN247]

[FN247] Cf. Case of Molina Theissen V. Guatemala. Reparations and Costs. Judgment of July 3, 2004. Series C Nº. 108, para. 122; Case of Escher et al. V. Brazil, supra note 6, para. 259; and Case of Reverón Trujillo V. Bolivia, supra note 11, para. 200.

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229. In the instant case, the Court notes that the representatives filed evidence of the expenses incurred in the forwarding of the documents of Rommel Anzualdo Castro to CEJIL, the takings of four declarations and legalization of two signatures before a notary public and the trips to Santo Domingo of a representative of APRODEH, three lawyers of CEJIL, a witness and an expert witness. Regarding some of the expenses mentioned, it is not clear which of them correspond, specifically, to expenses incurred in light of the instant case. The Tribunal takes into account the expenses mentioned by the representatives in relation to the activities carried out at the domestic level by APRODECH and the expenses incurred during the processing of the instant case before the Commission and the Court. The expenses in which the Anzualdo family incurred are covered by the compensation mentioned as pecuniary damage (supra para. 210).

230. As a result, the Court equitably determines the amount of US$ 14.000,00 (fourteen thousand dollars of the United States of America) in favor of CEJIL and APRODEH, as costs and expenses. Said amounts must be paid to Mr. Félix Anzualdo Vicuña, who shall deliver the corresponding amounts to the representatives. Said amount includes future expenses that the Anzualdo family and the representatives may incur at the domestic level or during the procedure of monitoring compliance with this Judgment.

D(4) Method of Compliance with the Payments Ordered

231. The State should make the payment of these amounts for the concept of pecuniary and non-pecuniary damages directly to the beneficiaries, as well as the reimbursement of costs and expenses, within the period of one year, as from the time of service of the present Judgment, under the terms of the following paragraphs.

232. The payments corresponding to the compensations for pecuniary and non-pecuniary damage directly suffered by Mr. Kenneth Ney Anzualdo Castro (supra para. 214 and 222) shall be delivered to his father, Mr. Félix Vicente Anzualdo Vicuña.

233. As to the amounts ordered as reparations and compensations in favor of Iris Isabel Castro Cachay de Anzualdo, who died on October 26, 2006, the amounts determined shall be delivered to her heirs; therefore, 50% of the amounts determined shall be delivered to Mr. Felix Vicente Anzualdo Vicuña and the remaining 50% shall be shared, in equal parts, between Mrs. Marly Arleny Anzualdo Castro and Mr. Rommel Darwin Anzualdo Castro.

234. Should the beneficiaries die before the pertinent above compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation.

235. The State must discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in the Peruvian legal currency, at the New York, USA exchange rate between both currencies prevailing on the day prior to the day payment is made.

236. If, due to reasons attributable to the beneficiary of the above compensatory amounts or his heirs, respectively, they were not able to collect them within the period set for that purpose, the State shall deposit said amounts in an account held in the beneficiaries' name or draw a certificate of deposit from a reputable Peruvian financial institution, in US dollars and under the most favorable financial terms allowed by the legislation in force and the customary banking practice in Peru. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

237. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses shall be delivered to the persons mentioned in their entirety in accordance with the provisions hereof, and may not be affected, reduced, or conditioned on account of current or future tax purposes.

238. Should the State fall into arrears with its payments, Peruvian banking default interest rates shall be paid on the amounts due.

VIII. OPERATIVE PARAGRAPHS

239. Therefore:

THE COURT,

DECLARES:

Unanimously that:

1. The State is responsible for the forced disappearance of Mr. Kenneth Ney Anzualdo Castro and, as a result, it violated the rights to personal liberty, humane treatment, life and

juridical personality, embodied in Articles 7(1), 7(6), 5(1), 5(2), 4(1) and 3 of the American Convention on Human Rights, in relation to the duty to respect and ensure those rights, contained in Article 1(1) thereof, as well as in conjunction with Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Kenneth Ney Anzualdo Castro, under the terms of paragraphs 33 to 103 of this Judgment.

2. The State violated, as a consequence of the forced disappearance of Kenneth Ney Anzualdo Castro, the right to humane treatment, fair trial and judicial protection, enshrined in Articles 5(1), 5(2), 8(1) and 25 of the American Convention on Human Rights, in conjunction with the duty to respect and ensure those rights and to adopt domestic legal provisions, contained in Articles 1(1) and 2 thereof and I.b) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro, under the terms of paragraphs 104 to 169 of this Judgment.

3. The State did not violate the right to freedom of thought and expression, recognized in Article 13 of the American Convention on Human Rights, based on the reasons expressed in paragraphs 116 to 120 of this Judgment.

AND ORDERS:

Unanimously that:

4. This Judgment is, per se, a form of redress.

Unanimously that:

5. The State must effectively conduct the criminal proceedings in process and any future proceeding in relation to the forced disappearance of Kenneth Ney Anzualdo Castro, to determine, within a reasonable time, the perpetrators and instigators who are responsible for the facts of this case and effectively impose the punishments and consequences according to the law, for which it must remove all obstacles, both factual and legal, that hinder the appropriate investigation into the facts and shall not apply any law or domestic legal provision, present or future, to escape from this obligation, under the terms of paragraphs 179 to 183 of this Judgment.

Unanimously that:

6. The State shall immediately proceed to search for and locate Kenneth Ney Anzualdo Castro or, if applicable, his mortal remains, by means of the criminal investigation or any other adequate and effective procedure under the terms of paragraphs 185 of this Judgment.

Unanimously that:

7. The State must continue making all the necessary efforts and adopt the administrative and legal measures and public policies that may correspond, to determine and identify the people who disappeared during the internal conflict according to the most effective technical and scientific means and, as long as it is possible and scientifically advisable, by the standardization of the investigation criteria, for which it is convenient to establish a system of genetic

information that would allow the determination and elucidation of the blood relationship of the victims and their identification, under the terms of paragraphs 188 and 189 of this Judgment.

Unanimously that:

8. The State must adopt the necessary measures to reform, within a reasonable time, its criminal legislation as to forced disappearance of persons, in order to render it consistent with the international standards, paying special attention to the terms of the American Convention and the Inter-American Convention on Forced Disappearance of Persons, under the terms of paragraphs 165 to 167 and 191 of this Judgment.

Unanimously that:

9. The State must implement, within a reasonable time, permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors, under the terms of paragraphs 193 of this Judgment.
Unanimously that:

10. The State must publish, within six months, as of notice of this Judgment, once, in the Official Gazette and in another newspaper with widespread circulation, paragraphs 30 to 203 and the operative paragraphs of this Judgment, under the terms of paragraph 194 of this Judgment.

Unanimously that:

11. The State must organize, within the term of six months, as of notice of this Judgment, a public act of acknowledgment of international responsibility for the forced disappearance of Kenneth Ney Anzualdo Castro and to apologize to him and his next-of-kin, under the conditions and terms of paragraphs 198 to 200 of this Judgment.

Unanimously that:

12. The State must erect a plaque in the Museum of Memory, in the presence of the next-of-kin, if they so wish, in a public act, within the term of two years, as of notice of this Judgment, under the conditions and terms of paragraphs 201 of this Judgment
Unanimously that:

13. The State must adopt the necessary measures to provide, immediately as of notice of this Judgment, the next-of-kin of Mr. Kenneth Ney Anzualdo Castro, with the appropriate treatment, by means of health public services, for as long as they need it and including the medicines, under the conditions and terms of paragraphs 203 of this Judgment.

By six votes to one,

14. The State must pay Félix Vicente Anzualdo Vicuña, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro the amounts determined in paragraphs 210, 214, 222 and 230 of this Judgment, as compensation for pecuniary and non-pecuniary damage, and reimbursement

of costs and expenses, as it may correspond, within the term of one year as of notice of this Judgment, under the terms and conditions of paragraphs 231 to 238 herein.

Judge ad hoc García Toma dissenting.

Unanimously that:

15. The Court shall monitor full compliance with this Judgment, by virtue of its authority and in compliance with its duties according to the American Convention, and shall consider this case closed once the State has fully complied with what was decided in this Judgment. The State must forward to the Tribunal a report on the measures adopted to comply with the judgment, within the term of one year as of notice of this Judgment.

Judge García Ramírez advised the Court of his Concurring Opinion and Judge ad hoc García Toma advised the Court of its Partially Dissenting Opinion, which accompany this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on September 22, 2009.

Cecilia Medina Quiroga
President

Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Victor Oscar Shiyin García Toma
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF ANZUALDO CASTRO V. PERU OF SEPTEMBER 22, 2009

1. The Inter-American Court has made an excellent development of case-law in a particularly relevant subject for human rights, frequented on multiple occasions: the forced disappearance of persons, as referred to in the Judgment in the case of Anzualdo Castro, issued on September 22, 2009, to which I attach this opinion. It is a violation – or a set of violations, combined in only one legal precept- receiver of particularly horrible facts, which had been widely condemned by the Inter-American jurisdiction, constantly and unanimously.

2. The Judgment in Anzualdo Castro and my personal opinion come on top of this tendency to condemn without exception. Forced disappearances correspond to a practice that has been common under strong authoritarian regimes established beyond the strict limits that marked the democratic criminal system in the Rule of Law. This is related, though closely related, to the criminal Law of the enemy, who creates a body of law to punish, using special provisions, the opponents (the "non-citizens"). The disappearance and other expressions of the same nature react in disregard of the Law, in an automatic and brutal form: they do not judge, they eliminate.

3. The forced disappearance constitutes - together with extra-legal executions, torture, massacres and systematic alterations of due process- the more characteristic expression of an overwhelming and defiant authoritarianism that seems to be in retreat. However, it always lies ahead of us, waiting for the mistakes or fatigue of the Rule of Law to recover territories from which it has retreated.

4. The issue of forced disappearance has been present in the first cases brought to this Court's attention and it continued appearing in other cases, like a constant pain. Reference is made to such issue in some reservations to the American Convention or certain restrictions to the subject-matter jurisdiction of the Tribunal, imposed upon the signing of it or acknowledgment of its advisory jurisdiction, limits that the tribunal itself has examined on previous occasions. The same issue appears, certainly, among the topics that have been subjects of reflection and controversies within the realm of the international criminal law, finally contemplated in the Rome Statute and the corresponding elements of crime.

5. Today, our regional corpus juris is compiled in a convention on this subject and the world system has created a treaty of the same nature- after such convention- that reflects the universal condemnation and establishes its terms. The Inter-American Convention on Forced Disappearance of Persons contains, among other provisions, a description of the forced disappearance and confers upon the Court subject-matter jurisdiction to hear violations of these provisions – and legal interests embodied in such provisions- which make up such treaty. This description informs on the composition of the criminal definitions, the inclusion of which is binding on the States Parties to such Convention, according to what the Court has mentioned, contributing in this way to the fulfillment of the domestic bodies of law under the standards provided for in international documents. In this and in other judgments, the Court itself has urged the adoption, as elements of crime, of the description of disappearance contained in binding international treaties.

6. The evolution of the subject-matter jurisdiction of the Inter-American Court – expansive jurisdiction that constitutes a valid data about the growing judicial oversight of human rights- already comprises, apart from the American Convention, in what it refers to, other treaties:

Protocol of San Salvador (in a very restricted way, which deserves a profound review); Inter-American Convention to Prevent and Punish Torture; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Belém do Pará (that the Court applied, for the first time, in the groundbreaking Judgment delivered in the case of Castro-Castro Prison, in which I included the explanation about the jurisdiction in the opinion related to such decision) and Inter-American Convention on Forced Disappearance of Persons.

7. I trust that the future brings other situations of adjudicatory jurisdiction of the Court, not only in relation to treaties or protocols in force, but by the way of new and desirable development of human rights Law, which should include certain issues frequently dealt with, under the form of special conventions. Some of them are already embodied by global rules and all of them relate to matters or groups of people whose best protection probably requires specific treaties, given their characteristics within the American region: indigenous people, minors, migrants, due process, adults, individuals deprived of liberty, relevant behaviors from the view point of bioethics, among others.

8. The members of the Inter-American Court who participated in the delivery of the first judgments in adjudicatory cases - a generation of judges who deserve the greatest appreciation; I have always expressed this and I now repeat it- played an important role in the judicial oversight of human rights when they analyzed, without any conventions on this matter, the characteristics of forced disappearance. This is what happened in the case of Velásquez Rodríguez who is still taken into account by those who study and apply the International Law on Human Rights. It was then- and it still is, due to its remarkable importance and the great reception it had in jurisprudence and doctrine- a unique ruling that honor those who sign it and rests on the foundation of outstanding case-law developed by the Inter-American Court.

9. In that early judgment, the Court asserted, among other concepts, two main elements of the forced disappearance, namely: its continuous or permanent character (in the way of similar crimes, examined under the Peruvian theory and legislation) and its multiple-offensive nature: violation of several human rights, This perception of the Tribunal coincides, certainly, with the descriptions contained in the treaties to which I previously referred. It is around such perception that the subsequent case-law of the Inter-American Court – with interested expressions- has been developed, which derives, so far, in the judgment in Anzualdo Castro.

10. When agreeing with my colleagues in the delivery of the judgment in the case of Anzualdo Castro, I had to reflect on certain aspects of the complex precept of forced disappearance and make myself some questions, to which I answered, to myself, in the same way the judgment did. However, the path has been difficult. Some of the questions still exist. I would like to present them again, as I did in the past, without setting aside, for that reason, the provisional answers – or final perhaps, for the Court and for me, who also sign the judgment- that exist in the foundation and development of this important judicial decision. Maybe, I have to envy- it is just an expression, of course- those who never doubt and are able to present their ideas as from absolute certainties. I doubt. The doubt is usually resolved with a reference that tips the scale: pro persona, in the double sense of the benefit of a victim of a specific violation and the development of the general protection of human beings. Pro persona, of course, with a

reasonable basis. Otherwise, there would be mere impulse, subjectivity, and perhaps arbitrariness.

11. That the forced disappearance constitutes a continuous or permanent violation of several rights – and it would be the same if it dealt with only one right or liberty – does not seem to generate, at the moment, further controversies. If we follow the doctrine of the continuous crime (taking into account the healthy practice, required by the reason, of observing the whole historical and current Law at the time of solving particular cases and we do not intend unveiling law and concepts in each judgment we sign) we will come to the conclusion that the violence of a legal interest covered by a right or a freedom continues in time as long as the criminal conduct of such violation exists (in other words, so long as the described behavior continues in time). It is not about that the consequence or effect of such behavior still exists- obvious existence, as noted in the case of murder- but that this behavior continues in time without interruption so that it keeps such violation alive, valid, and present.

12. There is no doubt either, at the present, about the autonomy of the precept of disappearance, once the various concurrent elements that make it up are present (hence, deprivation of liberty, refusal to acknowledge it and to disclose the whereabouts of the victim). These elements entail an infringement of specific rights, which involve the general harm by which the disappearance is characterized. This is the way in which, together with several elements, the concept and description of the forced disappearance, under the terms of the conventions describing it, are formed. Certainly, there may be other violations also autonomous that generate a set of violations committed by one or several acts, without loosing the relevance that they naturally entail and merge into one.

13. Instead, it does not seem to be so established, and it is certainly not, the determination of the content that we give to the expressions multiple violation, plural violation, pluri-offensive fact and other similar terms. What rights does this precept affect? Which are the concepts of violation that the forced disappearance entails? Do we have to add definitions of violation, in spite of the descriptions contained in an international convention – that we are applying- and that are inherent to the nature of the facts under study and classification? Has the interpreter a kind of freedom of "imagination" to include or exclude elements discretionally, appealing to the needs of prevention and punishment that may be dealt with, perfectly, without sacrificing the rule and logic and that may go beyond the nature of the facts?

14. In order to answer to these questions, I believe it is essential to accept a rule and to dismiss the temptation. The rule that I accept is the following: the rights violated by certain facts described in the set of human rights rules are precisely those contained in such description, not others, so long as this is not modified. It seems patently obvious. Perhaps it is. But it cannot be spontaneously and easily admitted, or its consequences accepted, for that reason. The temptation that needs to be dismissed is that: to combine in the precept all the rights, all the liberties that we may have with certain effort of our imagination, skill or will, under the belief that suffice it to say that there is a violation of right in order for such violation to exist or that such combination implies more condemnation and better prevention, and that for this reason, it frees the interpreter from restricting to the nature and limits of the precept it applies.

15. The forced disappearance affects the liberty of the victim and the possibility of having access to justice. These are the main, remarkably rights that the disappearance violates. The descriptions contained in the international treaties follow that direction, in a precise and clear manner. If we were- but we are not, though the analogy helps- establishing the classification of crimes committed by means of a certain fact that affects legal interests subjected to criminal protection, we surely would conclude that there are crimes against liberty and crimes against justice (under the expressions that may correspond according to the technique used to classify by the respective codes). We could also say, going beyond the precise regulatory description of the facts, that the disappearance entails an infringement of the mental integrity of the victim, given that it causes to the victim- we have to presume it, but it is perfectly reasonable to assume- anguish, pain, fear, suffering, which are the relevant features of the violation of the mental integrity. This conclusion does not go beyond the facts of the disappearance, but naturally derives from them.

16. Up to here what is evident, and perhaps very evident, to put forward, with soundness and competence, the most firm condemnation and the most efficient prevention and prosecution of forced disappearance. I would use another reference, just by way of example: The condemnation that we address against abduction (and I highlight- do not misinterpret- that it is no way my intention to dissolve the disappearance in the abduction: both precepts have been differentiated for a while, distinction that I emphasize) and the direct and effective fight that the State must start against such serious criminal behavior, do not require us to say, in addition, that the abduction is simultaneously murder, though eventually it may end in that, in which case there will be concurrence of offenses.

17. In the foregoing paragraph I have mentioned elements that are interesting for some of the questions I made on occasion of forced disappearance. Obviously, the disappearance, which places the individual outside any possibility of continue living in the same conditions he or she was doing it, hinders the exercise- not the entitlement, which is different- of several rights and liberties. For example, the disappeared person can no longer participate in public demonstrations; freely express his or her thought in the media or even, in closed places; move from one place to another; receive the benefits of special measures acknowledged for children and adolescents; get married; administer and enjoy his or her property, among others. Could we infer- I insist: it is a question- that the plural violation of rights, such as the disappearance is, necessarily includes (and we should so declare) violations of the right to expression, freedom of movement, family, property, that the disappeared individual is not able to exercise precisely in light of his or her deprivation of liberty and access to justice?

18. These questions in relation to the violated rights due to the disappearance (which have still not been extended to expression, movement, special protective measures, property, and marriage and so on, but that could be cast on these, using the same logic) lead to think about the right to protection of life. It is noticeable that many cases of disappearance end in deprivation of life (and in this way the abduction ends, continuous crime and the murder appears, instantaneous crime) in the same way that many abductions end in the murder of the victim, which in turn, turns into the injured party of the murder: two conducts, two periods of time, two crimes (though some national texts mention abduction or rape "resulting" in murder, forgetting that the result of

abduction is abduction - it is its nature-, the result of rape is rape and the result of murder is murder).

19. It seems evident that the forced disappearance ceases when the disappeared person is found or when the disappearance ends with the deprivation of life. The arbitrary deprivation of liberty and the deprivation of life cannot coexist, that is to say, exist simultaneously. Of course, the fact that the disappeared person is found or dies does not erase such violation. In the second situation- arbitrary deprivation of life- there is a new violation that is added to the previous one: there will be violation of the right to liberty and violation of the right to life, but no aggravated violation - due to the death of the victim- of liberty. If a court assumes that the missing person has died (taking into account the pattern of behavior of the repressive State or the time elapsed between the disappearance and the judicial analysis of this fact) and therefore, such assumption produces full legal effects, the court would be, strictly speaking, sustaining that the disappearance has ended and instead, another situation and another violation have arisen: arbitrary deprivation of life. Then, the court would enter into the analysis of both violations, successive, and the consequences thereof.

20. The issue seems to have been solved – I do not know if for ever or for the moment- in favor of the idea that the forced disappearance entails an infringement of the right to protection of life taking into account that such disappearance may lead to death. This point of view puts the idea of risk in the center of the scene. In order to assume that death is the ultimate data of the disappearance, the analyst notes, as I said a pattern followed in many cases of disappearance, the context in which this occurs and the possibility of assuming, in time, that the individual deprived of liberty has finally lost his or her life. Therefore, an uncertain fact, not proven but probable, is added to the unequivocal precept of disappearance: the risk of violation of another legal interest, though this violation has still not been committed (and not even tried, perhaps).

21. In line with these considerations, it can be mentioned that the State responsible for the disappearance has violated the duty to ensure the right to life. This obligation implies the adoption – what has not happened- of all the measures necessary to protect such right and avoid putting it at risk. Under the same or very similar reasoning, can we bring up other violations, very different and distant, bearing in mind that the facts prove, in the case of the missing person, that the State has neither taken the necessary measures to ensure the individual the exercise of such other rights to which I referred, including but not limited to, in the previous paragraphs?

22. The judgment to which this opinion refers introduces a relevant novelty. In fact, it considers that the forced disappearance violates the right to juridical personality, embodied in chapter 3 of the American Convention. This statement of the judgment also entails questions that I mention herein. Upon considering that there is violation of this precept (not in the specific case and for the circumstances of the case, which may be sufficient to prove that other violation, but in any hypothesis of forced disappearance, per se), the Court agrees with the approach that have put forward, for quite some time, some parties to the cases before the Inter-American system.

23. In order to assess whether there is a violation of Article 3, it is essential to observe the current descriptions on forced disappearance: do they include the violation of the right to juridical personality? It is then crucial to establish the situation in which such violation would

occur, that is to say, to establish what the juridical personality is, in the first place, and what said right to personality implies, in the second place. The first question has an easy and safe answer: Nor the United States Convention or the Inter-American Convention in this field contains reference to the right to juridical personality when they describe, impliedly or expressly, the precept of forced disappearance. Until the delivery of the Judgment to which this opinion is attached, the case-law of the Inter-American Court has neither contemplated it. Rather, it had considered that the disappearance did not imply an infringement of said right.

24. Since there is no clear and direct reference to such matter in the conventions and the precedents established by the Inter-American Tribunal, it is vital to examine whether the disappearance includes, based on its own nature, the violation of the right mentioned herein. This is what the Court has done, not without also contemplating some statements about the violation of the juridical personality, made by other considerable sources.

25. Nevertheless, in order to ensure that such violation exists, considering the nature of the forced disappearance, it is necessary to define, as I said before, what is the right to juridical personality. It has been generally understood- as the Inter-American Court has deemed- that the juridical personality implies the capacity of the individual to be entitled to legal rights and obligations. That being the case, the recognition of juridical personality implies the affirmation that an individual has said capacity. The right to recognition entails the possibility of demanding the recognition of the capacity to be entitled to rights and obligations.

26. We are, then, before a right of enormous relevance. The State could not deprive a human being from the capacity to acquire rights, though it could certainly establish legal methods to exercise such rights. But this is a different thing. The capacity to exercise rights, in conjunction with considerations related to age, mental health and other factual information with legal effects, does not affect, in itself, the entitlement to rights. It is also a different thing- an issue of fact, not of law- the creation of obstacles, material disturbance, and arbitrary denial of the State as to the exercise of rights.

27. If this is like that- I use a conditional form: “if it is”-, the forced disappearance, a fact attributable to the State, does not seem to necessarily involve a denial or disregard for the entitlement to rights, like there would be if an individual was to be considered "a thing", and not "an individual" (which occurs in cases of slavery, for example) or if the personality of a social aggregate would be explicitly denied (as with the case of indigenous groups, examined by the Inter-American Court), with the resulting violation of individual rights that may find its source, framework and protection in the collective rights of a group to which the personality is denied.

28. The Judgment delivered in the case of Anzualdo Castro, which causes many questions, has set out the clarification of the issue under certain concepts that are the basis, according to the decision itself, for the thesis by which there is a violation of Article 3. I am not referring to mere statements taken from recognized sources, but to the arguments with which the tribunal analyzes the recognition or disregard of the juridical personality. It considers that this connection between forced disappearance and the violation of Article 3 of the American Convention constitutes a piece of information about the evolution of the international law on human rights and it analyzes

the disregard of the juridical personality by reference to the possibility/impossibility of exercising rights.

29. In this aspect, the Judgment of the case of Anzualdo Castro deems that the disappeared individual is placed outside the legal framework, given this situation. He is in a kind of legal uncertainty, a limbo, a vacuum, outside the protection of the law. He is deprived of having access to justice, of the recourses that justice provides to him, as well as the protection (which is true, as we have seen, and it is established in international treaties).

30. The Judgment goes, then, on the description of situations of fact and the narration of infinite and evident obstacles that are contrary to the exercise of the victim's rights. At some moment, it indicates, though it does not insist, that it is denied to the individual the capacity of being entitled to rights, it is eliminated or cancelled by an act attributable to the State. However, the main argument points to the impossibility of exercise rights. This does not derive from a disregard de jure, but from a disturbance de facto.

31. Are we talking, then, of the disregard of the juridical personality, with all that it entails or are we referring to an extreme and very serious impediment to the exercise of rights, which indisputably exists in the forced disappearance? If it is the last option, then what it is being violated is the exercise of rights whose entitlement- token of the juridical personality- remains with the existence of the person that has disappeared, but not died. Therefore the juridical personality subsists.

32. It is worth remembering that Civil Law has developed certain precepts addressed to ensure the existence of rights of he who disappears (precepts historically developed, certainly, by events different to the ones that determine the forced disappearance that violates the right to freedom and access to justice), like the declaration of absence and, to an extent, the presumption of death. Hence, the person declared to be absent is not deprived of all the rights – that is, his juridical personality is not disregarded-, but it is therefore noticeable his or her impossibility to exercise rights he or she is entitled to and does not lose, and certain individual is appointed to exercise or preserve them while the absent person returns. In sum, his juridical personality continues. I emphasize that I am not strictly comparing the absence under the terms of Civil Law to the forced disappearance under the terms of Criminal Law and International Law on human rights, but invoking information of such disappearance that allow to note the difference between the capacity to be entitled to and the capacity to exercise, precisely in a situation that is marked by the absence/disappearance of the holder of rights.

33. Perhaps, I could resort to another example. When a State agent seriously injures a person, entirely depriving such individual from the capacity to reason and even, the capacity for consciousness, it generates a situation that prevents the victim, totally and absolutely, from exercising any right. It constitutes, of course, a violation of the right to humane integrity. Should we also sustain that there is a violation of the right to juridical personality because the victim is, in fact, in a kind of limbo or vacuum? It will be said, of course, that other people could exercise some rights of the injured party, acting on his or her behalf. This could happen in the case of the disappeared person.

34. Maybe the analysis of the elements that make up the forced disappearance is not finished. There are areas pending a careful evaluation. The existence of several and different arguments, which are good arguments in the end, coupled with the consideration pro persona to which I referred before, can tip the balance that explains an opinion. However, this path has been difficult. An edge and a razor strictly legal that do not modify the rejection and the condemnation- proven on multiple occasions- against forced disappearance, which constitute a flagrant violation of the human dignity, as the Court has held and we, the members, had repeated. It must be condemned, pursued and punished without pause or concession.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

PARTIALLY DISSENTING OPINION OF JUDGE AD HOC VICTOR OSCAR SHIYIN GARCÍA TOMA

As to the issue of the reparations, I deem that the quantum of such reparations regarding the pecuniary and non-pecuniary damage, costs and expenses has been established without any specific technical ground, under the discretionary criteria that is more and more discussed. Based on this reason, I have the need to point out that I do not have any objective parameter to consider as tiny, reasonable or excessive the sums established by the Court.

It is worth mentioning that the amounts of reparations that the defendant State has, with all its efforts, been paying to victims or next-of-kin for acts of terrorism (civilians, political authorities and police and military officers); as well as the cases related to the HIV/AIDS infection at State hospitals are, in no way, comparable. Therefore, it is clear that between the quantum determined by the Court and the defendant State within the area of reparations, there is a remarkably and unjustified asymmetry and disparity.

In the future, it would be important for the Court to rely on specialized experts and to determine precise rules for the establishment of said reparations. It should not be ignored the fiscal reserves, average income levels of the defendant State, among other aspects. This would allow the reparations to advance legal security.

JUDGE AD HOC VICTOR OSCAR SHIYIN GARCÍA TOMA