

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF OSORIO RIVERA AND FAMILY MEMBERS v. PERU

JUDGMENT OF NOVEMBER 26, 2013

(Preliminary objections, merits, reparations and costs)

In the case of *Osorio Rivera and family members*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:

Manuel E. Ventura Robles, Acting President*
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Roberto F. Caldas, Judge
Humberto Antonio Sierra Porto, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers this Judgment, structured as follows:

* The President of the Court, Judge Diego García-Sayán, a Peruvian national, did not take part in the hearing of this case or the deliberation of this Judgment, in accordance with the provisions of Articles 19(2) of the Court's Statute and 19(1) of its Rules of Procedure. Consequently, pursuant to Articles 4(2) and 5 of the Court's Rules of Procedure, Judge Manuel E. Ventura Robles, Vice President of the Court, became the acting President for this case. Manuel E. Ventura Robles, Vice President of the Court, became the acting President for this case.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On June 10, 2012, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court (hereinafter “submission brief”) the case of “Jeremías Osorio Rivera and others” against and the Republic of Peru (hereinafter “the State” or “Peru”), indicating that: (a) Jeremías Osorio Rivera had been detained by a Peruvian Army patrol in the province of Cajatambo, department of Lima, on April 28, 1991, and subsequently forcibly disappeared in a context of armed conflict, in which enforced disappearance had allegedly been used systematically by members of the State’s armed forces; (b) Jeremías Osorio Rivera had been subject to alleged acts of torture during his transfer by members of the Cajatambo Counter-subversive Base on April 30, 1991; (c) the soldiers had not provided information on his whereabouts and, subsequently, disseminated false information on this, and (d) to date, “more than 20 years after the [presumed] victim’s enforced disappearance, and with the entire truth about the events still not known, the domestic criminal proceedings ha[d] not provided an effective remedy to determine the fate of the [presumed] victim, or to ensure the rights of access to justice and to the truth through the investigation and eventual punishment of those responsible.”

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

- a) *Petition.* On November 20, 1997, Porfirio Osorio Rivera and the *Asociación Pro Derechos Humanos* (APRODEH) lodged the initial petition before the Commission;
- b) *Admissibility Report.* On July 12, 2010, the Commission approved Admissibility Report No. 76/10;¹
- c) *Merits report.* On October 31, 2011, the Commission approved Merits report No. 140/11,² in accordance with Article 50 of the Convention (hereinafter also “the Merits report” or “Report No. 140/11”), in which it reached a series of conclusions and made recommendations to the State.
 - a. *Conclusions.* The Commission concluded that the State was responsible for the following violations:
 - i. Of the rights recognized in Articles 3, 4, 5(1), 5(2), 7, 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this international instrument, to the detriment of Jeremías Osorio Rivera;
 - ii. Of Articles I and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Jeremías Osorio Rivera, and
 - iii. Of Articles 5(1), 8(1) and 25 of the American Convention in relation to Articles 1(1) and 2 of this instrument, to the detriment of the family members [...] named in paragraph 156 of the Merits report.
 - b. *Recommendations.* Consequently, the Commission made a series of recommendations to the State:
 - i) Conduct a complete, impartial, and effective investigation into the whereabouts of Jeremías Osorio Rivera and, should it be discovered that the

¹ In this report, the Commission declared the petition admissible in relation to the presumed violation of Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of this instrument, and in relation to Articles I and III of the Inter-American Convention on Forced Disappearance of Persons. *Cf.* Admissibility Report No. 76/10, Case of 11,845, Jeremías Osorio Rivera and others, Peru, July 12, 2010 (file of proceedings before the Commission, volume I, folios 7 to 15).

² Merits Report No. 140/11, Case of 11,845, Jeremías Osorio Rivera and others, Peru, October 31, 2011 (merits file, volume I, folios 7 a 53).

victim is not alive, take the steps necessary for his remains to be returned to his family;

- ii) Implement the domestic procedures related to the human rights violations established in th[e] report and conduct the criminal proceedings for the crime of enforced disappearance against Jeremías Osorio Rivera currently underway, in an impartial and effective manner and within a reasonable time, in order to fully clarify the incident, identify all the guilty, and impose the corresponding penalties;
 - iii) Provide adequate redress for the human rights violations established in this report, covering both the pecuniary and non-pecuniary aspects and including fair compensation, the establishment and dissemination of the historical truth of the events, measures to keep alive the disappeared victim's memory, and the implementation of a suitable program of psychosocial care for his next of kin;
 - iv. Take the necessary steps to prevent similar events from occurring in the future, in accordance with the duty of prevention and the obligation of guaranteeing the fundamental rights recognized in the American Convention. In particular, implement permanent programs on human rights and international humanitarian law at the training schools of the Armed Forces [, and]
 - v. Organize an act of public acknowledgement of its international responsibility and make a public apology for the violations established in th[e] report.
- c. *Notification of the State.* The Merits report was notified to the State on November 10, 2011, granting it two months to provide information on the measures taken to comply with the respective recommendations.
- d) *First report on compliance and request for an extension.* On January 11, 2012, the State presented its first report on compliance. Subsequently, on February 10, 2012, the State asked for an extension to the two-month period and waived the possibility of filing preliminary objections in relation to this time frame. The same day, the Commission notified the State that it was granted the requested extension.
 - e) *Second report on compliance and request for an extension.* On March 21, 2012, the State presented its second report on compliance and requested a two-month extension, expressly waiving the possibility of alleging this time frame before the Court in relation to the admissibility of the case, in order to have more time to comply with the Commission's recommendations. On April 10, 2012, the Commission notified the State that it was granted the requested extension.
 - f) *Third report on compliance and request for an extension.* On May 24, 2012, the State forwarded its third report on compliance and requested a third extension for three months. However, the Commission considered "that the information provided by the State on the three occasions d[id] not reveal substantial progress in complying with the recommendations made and, taking into account the position of the petitioners as regards submitting the case, the Commission decided not to grant the extension requested and to submit the case to the jurisdiction of the Inter-American Court due to the need to obtain justice for the [presumed] victims."
 - g) *Submission to the Court.* On June 10, 2012, the Commission submitted to the jurisdiction of the Inter-American Court all the facts and human rights violations described in the Merits report "due to the need to obtain justice for the [presumed] victims, owing to the nature and severity of the violations proved, and to the State's failure to comply with the recommendations." The Commission appointed Commissioner José de Jesús Orozco and the then Executive Secretary Santiago A. Canton, as its delegates before the Court and designated Elizabeth Abi-Mershed, Deputy Executive Secretary, Tatiana Gos and Daniel Cerqueira, Executive Secretariat lawyers, as legal advisers.

3. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violation of Articles 3, 4, 5(1), 5(2), 7, 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, and the violation of the obligations established in Articles I and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Jeremías Osorio Rivera; also, the violation of the rights established in Articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of this international instrument, to the detriment of Juana Rivera Lozano (mother); Epifanía Alejandrina, Elena Máxima, Porfirio, Adelaida, Silvia, Mario and Efraín Osorio Rivera (siblings); Santa Fe Gaitán Calderón (permanent companion), and Edith Laritza Osorio Gaytán, Neida Rocío, Vannesa Judith and Jersy Jeremías, all with the surnames Osorio Gaitán (children). In addition, the Commission asked the Court to order the State to provide certain measures of reparation that will be described and analyzed in Chapter VIII of this Judgment.

II PROCEEDINGS BEFORE THE COURT

4. *Notification of the State and the representatives.* The Court notified the Commission's submission of the case to the representatives of the presumed victims on August 6, 2012, and to the State on August 8, 2012.

5. *Brief with motions, arguments and evidence.* On October 5, 2012, the representatives of the presumed victims submitted to the Court their brief with motions, arguments and evidence (hereinafter "motions and arguments brief"). The representatives agreed substantially with the Commission's allegations and asked the Court to declare the international responsibility of the State for the violation of the same articles alleged by the Commission and, also, the "violation of the right to the truth of the [presumed] victim and his next of kin, which is protected by both Articles 8 and 25 of the [American Convention], in relation to Article 1(1) of this instrument." In addition, the presumed victims requested, through their representatives, access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or "the Fund"). Lastly, they asked the Court to order the State to adopt different measures of reparation and to reimburse certain costs and expenses

6. *Answering brief.* On February 20, 2013, the State submitted to the Court its brief filing preliminary objections, answering the brief submitting the case, and with observations on the motions and arguments brief (hereinafter "the answering brief"). In this brief it filed two preliminary objections. The State appointed Luis Alberto Huerta Guerrero, the Peruvian State's Supranational Special Public Attorney, as its Agent, and Iván Arturo Bazán Chacón and Carlos Miguel Reaño Balarezo as Deputy Agents.

7. *Access to the Legal Assistance Fund.* In an Order of the acting President of the Court for this case (hereinafter "the acting President") of March 12, 2013, the request made by the presumed victims, through their representatives, to access the Court's Assistance Fund was declared admissible.³

³ Cf. *Case of Osorio Rivera et al. v. Peru*. Order of the acting President of the Inter-American Court of March 12, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/osorio_fv_13.pdf

8. *Observations on the preliminary objections.* On May 14 and 17, 2013, the Commission and the representatives of the presumed victims, respectively, presented their observations on the preliminary objections filed by the State.

9. *Public hearing and additional evidence.* By an Order of the acting President of July 8, 2013,⁴ the parties were convened to a public hearing to receive their arguments and their final oral observations on the preliminary objections and eventual merits, reparations and costs, as well as to receive the statement of presumed victim Porfirio Osorio Rivera, the testimony of witnesses Simeón Retuerto Roque and Ricardo Alberto Brousset Salas, and the expert opinion of Avelino Trifón Guillén Jáuregui. The public hearing took place on August 29, 2013, during the 100th regular session of the Court, which was held at its seat.⁵ During the hearing, the statements were received of a presumed victim, of a witness by audiovisual means, and of an expert witness,⁶ as well as the final oral observations and arguments of the Commission, the representatives of the presumed victims and the State, respectively. Also during the hearing, the parties presented certain documentation,⁷ and the Court requested the parties to provide specific information. In addition, the statements required by affidavit in the Order of the acting President of July 8, 2013, were received.

10. *Final written arguments and observations.* On September 30, 2013, the State and the representatives forwarded their final written arguments and the Commission presented its final written observations.

11. *Observations of the representatives and the State.* The acting President granted the representatives and the State a specific time period to present any observations they deemed pertinent on the information and annexes provided by the representatives and the State. On October 30 and November 1, 2013, the State and the representatives, respectively, forwarded their observations.

12. *Observations of the State on the observations of the representatives.* On November 14, 2013, the State presented observations concerning "the absence of observations by the representatives on the annexes to the final written arguments presented by the Peruvian State." Given that the said observations had not been requested by either the Court or its acting President for this case, this brief of the State is inadmissible and the Court will not take it into account.

13. *Disbursement in application of the Assistance Fund.* On October 21, 2013, the Secretariat, on the instructions of the acting President for this case, transmitted to the State information on the disbursements made in application of the Victims' Assistance Fund in this case and, as established in article 5 of the Court's Rules for the Operation of this Fund, granted it a time frame for

⁴ Cf. *Case of Osorio Rivera et al. v. Peru*. Order of the acting President of the Inter-American Court of July 8, 2013. Available at: http://www.corteidh.or.cr/docs/asuntos/osorio_08_07_13.pdf

⁵ At this hearing there appeared: (a) for the Inter-American Commission: Commissioner Rodrigo Escobar Gil, and Executive Secretariat lawyer, Silvia Serrano Guzmán; (b) for the representatives of the presumed victims: Gloria Cano Legua and Jorge Abrego Hinojosa, Executive Director and lawyer of APRODEH, and (c) for the State of Peru: its Agent, Luis Alberto Huerta Guerrero, and Deputy Agents, Iván Arturo Bazán Chacón and Carlos Miguel Reaño Balarezo.

⁶ Mr. Brousset Salas did not appear to testify because "he [was] not in San José, Costa Rica, and thus c[ould] not testify in the scheduled hearing." Communication of the State received by e-mail on August 28, 2013.

⁷ The representatives provided the section "Presentation," and pages 47, 48, 52, 63, 65, 73, 101, 102, 127, 134, 135, 139, 141, 167 and 235 of the report "*En Honor a la Verdad*" of the Permanent Historical Commission of the Peruvian Army, published in Lima in 2010, and the State provided supreme final judgment R.N. No. 1071-2012 issued by the Transitory Criminal Chamber of the Supreme Court of Justice on April 17, 2013.

presenting any observations it deemed pertinent. The State forwarded the corresponding observations on October 30, 2013.

III COMPETENCE

14. The Court is competent to hear this case, pursuant to Article 62(3) of the American Convention, because Peru ratified the American Convention on July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981. Furthermore, Peru deposited the instrument ratifying the Inter-American Convention on Forced Disappearance of Persons on February 13, 2002, and it entered into force for the State on March 15, 2002, in accordance with Article XX of that instrument. Regarding the competence *ratione temporis* of the Court as regards the application of the latter instrument to the facts of this case, this will be analyzed in the chapter on preliminary objections (*infra* paras. 27 to 35).

IV PRELIMINARY OBJECTIONS

15. The State filed two preliminary objections: alleged failure to comply with the six-month period for lodging the initial petition, and the alleged lack of competence *ratione temporis* of the Inter-American Court with regard to the Inter-American Convention on Forced Disappearance of Persons. Bearing in mind that, like any organ with jurisdictional functions, the Court has the power inherent in its attributes to determine the scope of its own competence (*compétence de la compétence/ Kompetenz-Kompetenz*),⁸ this Court will analyze the preliminary objections that were filed in the order in which they were presented.

A. Preliminary objection of alleged failure to comply with the six-month period for lodging the initial petition

A.1. Arguments of the parties and of the Commission

16. The State asked the Court to verify the legality of Admissibility Report No. 76/10 and conclude that the Commission should have declared the petition inadmissible, because its presentation was time-barred according to Articles 46(1)(b) of the American Convention and 35(1) of the Commission's Rules of Procedure in force at the time. In this regard, it explained that, in its observations of February 10, 1998, it had requested that the petition be declared inadmissible; thus, it had filed this preliminary objection at the proper time, during the admissibility stage of the proceedings before the Commission. The State argued that the initial petition had been "lodged one year and one month after the petitioner was notified of the final jurisdictional decision that archived the proceedings on the events that have been denounced, that is on September 25, 1996, and not in June 1997, as the petitioner had indicated in paragraph 14 of his brief with the initial petition." Consequently, based on the date of notification of the decision to dismiss the case that ended the proceedings, and the date the initial petition was lodged before the Commission, "it [can be] observed that the six-month time frame for lodging a communication under the system of individual petitions was long expired," because this period had expired at the end of May 1997. Added to this, the State affirmed that "if, according to the representatives, the military court was

⁸ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 78, and *Case of García Lucero et al. v. Chile. Preliminary objection, merits and reparations*. Judgment of August 28, 2013. Series C No. 267, para. 24.

not a competent court, they should not have waited until this organ ruled on the events of this case, [but] should have submitted the petition at the time of the disqualification of the ordinary judge in favor of the military justice system, that is on July 22, 1992." On this basis, the State asked the Court to declare that the preliminary objection was justified and that "the application presented by the Commission was inadmissible."

17. The Commission explained "that, during the admissibility procedure, the State had gradually changed its position on this point as the domestic proceedings advanced." In this regard, it indicated that, on a first and only occasion, the State had referred "to the petition being time-barred in relation to the final decision issued in the proceeding before the military jurisdiction" and, subsequently, had asserted repeatedly "that it was the proceeding in the ordinary jurisdiction that was the appropriate remedy for the matter being examined and [had] argued the failure to exhaust domestic remedies, because the said proceeding had not yet concluded." Thus, the Commission indicated that the State's position before the Court was inconsistent with the position it had held during the admissibility stage, once it became aware of the existence of a criminal proceeding in the ordinary jurisdiction. Accordingly, the Commission argued that "it is not admissible, under the estoppel principle, for the State to return to an argument that the State itself had changed at the admissibility stage before the Commission." In addition, the Commission considered that "the allegation of non-compliance with the six-month period logically excluded the allegation of failure to exhaust domestic remedies." Consequently, "[i]f the State considers that domestic remedies have not been exhausted, the six-month period is evidently inapplicable, because, as this is regulated in the Convention, it is dependent on the date of notification of the decision that exhausts the domestic remedies." Hence, the Commission observed that the decision based on which the State argued that the petition was time-barred corresponded to a decision to archive the case issued on February 7, 1996, by the Third Permanent Military Court of the Army's Second Judicial District, notified on September 25, 1996. On this point, the Commission argued that, in its Admissibility Report No. 76/10, it had referred to the consistent criterion of the organs of the inter-American system that "the investigations and proceedings under the military system of justice are neither appropriate nor effective remedies to respond to human rights violations and, therefore, such investigations and proceedings are not taken into account to analyze the requirement of exhaustion of domestic remedies and, consequently, that of the six-month period." Therefore, in the Admissibility Report, it had indicated "that the remedy that was theoretically appropriate – specifically, the criminal proceeding in the ordinary jurisdiction – continued to be processed and that, in this case, the exception of unwarranted delay established in Article 46(2) of the Convention was applicable." Based on the foregoing, the Commission considered that the preliminary objection filed by the State was inadmissible.

18. The representatives argued that, during the processing of the matter before the Commission and the Court, "the State [had] made two assertions that contradicted each other," and this adversely affected the procedural position of the opposing party owing to the principle of estoppel. In this regard, they indicated that, during the processing of the case before the Commission, the State had argued initially that the domestic remedies had been exhausted and that the petition based on the enforced disappearance of Jeremías Osorio Rivera had been lodged after the six-month period established by Article 46(1)(b) of the American Convention. Subsequently, still before the Commission, the State had maintained that domestic remedies had not been exhausted. Finally, before the Court, the State had returned to its initial argument that, in the instant case, the petition lodged before the Commission was time-barred. Regarding the proceeding in the military jurisdiction, which, according to the State, was the domestic remedy it had considered exhausted when calculating the six-month period, the representatives recalled that, previously, both the Commission and the Court had ruled that "the military jurisdiction does not constitute an adequate remedy to investigate, prosecute and punish human rights violations presumably committed by members of the armed forces, as occurred in this case." Therefore, for the purposes of the

admissibility requirement established in Article 46(1)(a) of the American Convention, the proceeding opened in the military jurisdiction to investigate the enforced disappearance of Jeremías Osorio Rivera did not constitute an effective remedy and “has no legal relevance when analyzing the requirement of exhaustion of domestic remedies and, thus, with regard to the exhaustion of the six-month period.” Lastly, the representatives indicated that, as the Commission had stated in its Admissibility Report, “[t]he passage of almost 19 years from the presumed enforced disappearance of Jeremías Osorio Rivera without his whereabouts having been determined and without a final decision having been issued establishing what happened and punishing all those responsible,” was sufficient to conclude that, in the instant case, there had been an unwarranted delay in the terms of Article 46(2)(c) of the American Convention. Consequently, they asked the Court to declare that the preliminary objection filed by the State was unfounded.

A.2. Considerations of the Court

19. Regarding the first preliminary objection, the Court notes that the arguments of the State are not related to the existence of a serious error that might have violated its right of defense, nor do they prove the specific prejudice supposedly caused to its right of defense in the proceedings before the Commission.⁹ The State’s arguments relate to a simple question of the admissibility of a petition before the inter-American system.

20. The pertinent part of Article 46(1) of the Convention indicates the following:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

(a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

(b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment; [...]

21. In its case law the Court has developed the assumptions to evaluate a preliminary objection related to the rule of the six-month period. First, the Court will analyze the procedural issues, which relate to the procedural moment at which the objection was filed; in other words, whether it was filed opportunistically in the proceedings before the Commission.¹⁰ In addition, it will determine its inadmissibility if the State has asserted that domestic remedies have not been exhausted, while also alleging an objection on non-compliance with the six-month period, in view of the intrinsic contradiction or incompatibility between these two arguments, as has been affirmed previously in several cases involving Peru.¹¹ In this regard, it should be recalled that the time frame established in Article 46(1)(b) of the Convention depends on the exhaustion of domestic remedies.¹² Regarding the requirements concerning the final judgment and its notification, given their close relationship to the rule of the exhaustion of domestic remedies, the specific circumstances of the case must be

⁹ Cf. *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 158, para. 66, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 25.

¹⁰ Cf. *Case of Neira Alegría et al. v. Peru. Preliminary objections*. Judgment of December 11, 1991. Series C No. 13, para. 30, and *Case of Durand and Ugarte v. Peru. Preliminary objections*. Judgment of May 28, 1999. Series C No. 50, para. 58.

¹¹ Cf. *Case of Neira Alegría et al. v. Peru. Preliminary objections, supra*, paras. 25 to 31; *Case of Cantoral Benavides v. Peru. Preliminary objections*. Judgment of September 3, 1998. Series C No. 40, para. 38, and *Case of Durand and Ugarte v. Peru. Preliminary objections, supra*, para. 58.

¹² Cf. *Case of Neira Alegría et al. v. Peru. Preliminary objections, supra*, para. 30.

observed in order to analyze this, as well as scenarios such as the inexistence or ineffectiveness of the available remedies, as well as continuing or permanent situations. In this regard, the Court has indicated that the six months rule established in Article 46(1)(b) of the Convention must be applied in accordance with the facts of the specific case in order to ensure the effective exercise of the right to lodge individual petitions.¹³

22. In this case, the initial petition was lodged on November 20, 1997,¹⁴ and forwarded to the State on December 10, 1997.¹⁵ The Court has verified that, during the admissibility stage, the State presented six briefs. In four of these briefs it asked the Commission to declare the petition inadmissible and to archive it. To this end, the State submitted two different arguments. First, in its brief answering the petition of February 12, 1998,¹⁶ it argued the inadmissibility of the petition "because its presentation was time-barred, after the six-month period following the date of which the final judgment was notified" in the criminal proceeding before the Third Permanent Military Court. Subsequently, the State presented information on the criminal proceeding arising from the investigation opened based on the complaint filed by Porfirio Osorio Rivera before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves on June 14, 2004.¹⁷ The forgoing reveals that, even though the State had initially filed this objection at the proper procedural moment, it subsequently adopted a different position during the admissibility proceeding by affirming that "[t]he criminal proceeding ha[d] not yet concluded,"¹⁸ and then returned to its initial argument in the proceedings before this Court.

23. The Court finds no evidence in this case to make it disagree with the decision on admissibility adopted by the Inter-American Commission. When analyzing the requirement established in Article 46(1)(a) of the Convention, and in order to adopt a decision on the admissibility requirements, the Commission considered that the proceeding opened in the military jurisdiction "did not constitute an effective remedy."¹⁹ Accordingly, the Commission continued its examination of admissibility based on the investigations that had been opened in the special ordinary jurisdiction and concluded, in the terms of Article 46(2)(c) of the Convention, that there had been an unwarranted delay in rendering judgment.²⁰ Thus, since the exceptions established in Article 46(2) do not require the exhaustion of domestic remedies, neither is the said requirement of the six-month period applicable in these circumstances;²¹ instead, the parameter that must be

¹³ Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 35, and *Case of Mémoli v. Argentina, supra*, para. 30.

¹⁴ Cf. Initial petition lodged before the Commission on November 20, 1997 (file of proceedings before the Commission, volume I, folios 209 to 212).

¹⁵ Cf. Communication of the Inter-American Commission of December 10, 1997 (file of proceedings before the Commission, volume I, folio 203).

¹⁶ Cf. Brief of the State of Peru of February 10, 1998 (file of proceedings before the Commission, volume I, folios 192 to 196). See also, Brief of the State of Peru of June 18, 2010 (file of proceedings before the Commission, volume I, folios 24 to 40).

¹⁷ Cf. Brief of the State of Peru of February 17, 2005 (file of proceedings before the Commission, volume I, folios 131 to 133); Brief of the State of Peru of April 5, 2010 (file of proceedings before the Commission, volume I, folios 94 to 101), and Brief of the State of Peru of June 18, 2010 (file of proceedings before the Commission, volume I, folios 24 to 40).

¹⁸ Brief of the State of Peru of June 18, 2010 (file of proceedings before the Commission, volume I, folios 24 to 40).

¹⁹ Admissibility Report No. 76/10, Case of 11,845, Jeremías Osorio Rivera and others, Peru, July 12, 2010, para. 29 (file of proceedings before the Commission, volume I, folios 7 to 15).

²⁰ Cf. Admissibility Report No. 76/10, Case of 11,845, Jeremías Osorio Rivera and others, Peru, July 12, 2010, para. 31 (file of proceedings before the Commission, volume I, folios 7 to 15).

²¹ In this regard, Article 46(2) of the American Convention indicates that:

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

analyzed is the concept of reasonable time.²² Consequently, the Commission determined that the petition had been presented within a reasonable time, taking into consideration “the continuing nature of the supposed enforced disappearance of Jeremías Osorio Rivera, the failure to elucidate his whereabouts, the failure to determine responsibilities, and the alleged denial of justice in the proceedings that were dismissed and in the one that is still underway.”²³ Accordingly, the preliminary objection filed by the State is rejected.

B. Preliminary objection of alleged lack of competence ratione temporis of the Inter-American Court in relation to the Inter-American Convention on Forced Disappearance of Persons

B.1. Arguments of the parties and of the Commission

24. The State argued that, in Merits Report No. 140/11, the Commission had considered that Peru was responsible for the violation of Articles I and III of the Inter-American Convention on Forced Disappearance of Persons adopted by the General Assembly of the Organization of American States (OAS) on June 9, 1994. According to the State, this treaty was approved at the domestic level by a supreme decree published in the official gazette, *El Peruano*, on January 23, 2002, and the ratification document was deposited with the OAS General Secretariat on February 13, 2002. Therefore, according to Article XX of this Convention, it entered into force for the State on March 15, 2002. In this regard, the State affirmed that the Court is unable to exercise its contentious competence to declare a violation of the provisions of the said international instrument with regard to events prior to its entry into force for a specific State. Thus, the State maintained that, based on the acceptance of the Court’s contentious jurisdiction by the States and on the principle of non-retroactivity established in Article 28 of the Vienna Convention on the Law of Treaties, the said Inter-American Convention “cannot be applied to this case, because the facts alleged by the petitioners occurred as of April 28, 1991; in other words, before the Peruvian State had ratified the said Convention, and even before it had been approved by the States parties.” The State also argued that, if the Court did not accept this preliminary objection, for the said Convention to be applicable to this case, it would first have to be proved that an enforced disappearance occurred that had been committed by State agents or tolerated by them; however, “such an enforced disappearance did not happen in this case.” Consequently, the State asked the Court to declare

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- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or right that have allegedly been violated;
 - b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, or
 - c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 46.

²² Article 32 of the Commission’s Rules of Procedure refer to the period for the presentation of petitions as follows:

1. The Commission shall consider those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.
2. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

²³ Admissibility Report No. 76/10, Case of 11,845, Jeremías Osorio Rivera and others, Peru, July 12, 2010, para. 33 (file of proceedings before the Commission, volume I, folios 7 to 15).

that the preliminary objection was founded and “the application presented by the Inter-American Commission was inadmissible in this regard.”

25. The Commission affirmed that the Court has temporal competence to rule on the Inter-American Convention on Forced Disappearance of Persons in this case. In this regard, it argued that, in the case of *García and family members v. Guatemala, Radilla Pacheco et al. v. Mexico*, and *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, the Court had declared the violation of Article I of the said Convention “in the understanding that, at the time it entered into force, the violation continued to be committed.” This was because, in the said cases, the start of the execution of the enforced disappearance had occurred when the Convention had not been adopted or had not entered into force for the State. In the instant case, it stated that the said instrument had been in force for at least 11 years, and the disappearance had not ceased. In this regard, it argued that the Court had competence to rule on non-compliance with the obligation not to practice the enforced disappearance of persons, established in Article I of the Inter-American Convention on Forced Disappearance of Persons, as of the moment at which this instrument entered into force for Peru. In addition, it indicated that the Court has competence to rule on the obligation, established in Article I of the said instrument, to investigate, adequately and effectively, enforced disappearances that occur under the State’s jurisdiction.

26. The representatives indicated that, in its consistent case law since 1988, the Court “has established the permanent or continuing nature of the enforced disappearance of persons, which has been recognized repeatedly by international human rights law.” In addition, they recalled that the Court had defined enforced disappearance even before the definition contained in the Inter-American Convention on Forced Disappearance of Persons. In this regard, they argued that, taking into account that Jeremías Osorio Rivera had been detained by members of an Army patrol on April 28, 1991, without his whereabouts supposedly being known at the present time, the continuing nature of the supposed enforced disappearance still remains to date. Thus, since this is a continuing or permanent violation, the Court is competent to examine the violations of the Inter-American Convention on Forced Disappearance of Persons. Consequently, they asked the Court to declare that the preliminary objection presented by the State was unfounded.

B.2. Considerations of the Court

27. The Court reiterates that, as any organ with jurisdictional functions, it has the power inherent in its attributes to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*).²⁴ The instruments accepting the optional clause on the binding jurisdiction (Article 62(1) of the Convention) presume the acceptance by the States that present them of the Court’s right to decide any dispute relating to its jurisdiction.²⁵

28. In the instant case, the objections filed by the State specifically question the temporal competence of the Court in relation to the Inter-American Convention on Forced Disappearance of Persons by affirming that the Court is unable to exercise its contentious competence in order to declare a violation of the provisions of this international instrument with regard to events prior to its entry into force for a State. In particular, in this case, violations of Articles I(a) and (b), and III of this instrument were alleged.

²⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*, *supra*, para. 78, and *Case of García Lucero et al. v. Chile*, *supra*, para. 24.

²⁵ Cf. *Case of Ivcher Bronstein v. Peru. Competence*, *supra*, para. 34, and *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 19.

29. Article XIII of the Inter-American Convention on Forced Disappearance of Persons,²⁶ in relation to Article 62 of the American Convention, establishes the power of the Court to examine matters related to compliance with the commitments made by the States parties to that instrument.²⁷ On this basis, and on that of the principle of non-retroactivity, codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties,²⁸ the Court is competent to examine the alleged failure to comply with this instrument, which establishes specific obligations in relation to the phenomenon of enforced disappearance as of the date on which the defendant State accepted the jurisdiction²⁹ and of the entry into force of the said instrument for the State.

30. Furthermore, the same principle reveals that, from the time that a treaty enters into force, the States parties can be required to comply with the obligations it contains in relation to any act that is subsequent to that date. This corresponds to the principle of *pacta sunt servanda*, according to which "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."³⁰ In this regard, it is necessary to distinguish between instantaneous acts and acts of a continuing or permanent nature. The latter extend "over the entire period during which the act continues and is not in conformity with the international obligation."³¹ Owing to their characteristics, once the treaty enters into force, those continuing or permanent acts which persist after that date can generate international obligations for the State party, without this signifying a violation of the principle of the non-retroactivity of treaties.³²

31. This type of act includes the enforced disappearance of persons, the continuing or permanent nature of which has been recognized repeatedly by international human rights law.³³ In such cases, the perpetration of the disappearance begins with the deprivation of the person's liberty and the ensuing lack of information on his fate, and remains until the whereabouts of the disappeared person are known and the facts have been clarified. Indeed, according to this Court's consistent case law, the relevant factor for the conclusion of an enforced disappearance is the

²⁶ This article establishes that: "[f]or the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and in the Statute and Regulations of the Inter-American Commission on Human Rights and the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

²⁷ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 303.

²⁸ Article 28 of the Vienna Convention on the Law of Treaties establishes that "[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

²⁹ Cf. *Case of González Medina and family members v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of February 27, 2012. Series C No. 240, para. 53.

³⁰ Article 26 of the Vienna Convention on the Law of Treaties. Similarly, cf. *Case of Loayza Tamayo. Compliance with judgment*. Order issued by the Inter-American Court on November 17, 1999. Series C No. 60, para. 7, and *Case of Radilla Pacheco v. Mexico, supra*, para. 20.

³¹ Article 14 of the draft Articles on Responsibility of States for Internationally Wrongful Acts. In this regard, cf. James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries*, Cambridge, University Press, 2002. Also, cf. *Case of Blake v. Guatemala. Preliminary objections*. Judgment of July 2, 1996. Series C No. 27, para. 39, and *Case of Radilla Pacheco v. Mexico, supra*, para. 22.

³² Cf. *Case of Radilla Pacheco v. Mexico, supra*, para. 22.

³³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 155, and *Case of Gudiel Álvarez et al. v. Guatemala. Interpretation of the judgment on merits, reparations and costs*. Judgment of August 19, 2013. Series C No. 262, para. 64. The European Court of Human Rights has also considered the continuing or permanent nature of the enforced disappearance of persons. Cf. ECHR, *Case of Cyprus v. Turkey*, Application No. 25781/94, Judgment of 10 May 2001, paras. 136, 150 and 158, and *Case of Loizidou v. Turkey*, Application No. 15318/89, Judgment of 18 December 1996, para. 41.

establishment of the person's whereabouts or the identification of his remains, and not the presumption of his decease.³⁴

32. In this regard, the Court has already established that it is competent to examine violations of a continuing or permanent nature that commenced before the defendant State had accepted the Court's contentious jurisdiction, and that persist following this acceptance, because they continue to be committed and, thus, the principle of non-retroactivity is not infringed.³⁵ The same criterion applies for the Inter-American Convention on Forced Disappearance of Persons. In previous cases with regard to Peru, the Court has already declared violations of this international treaty, even though the commencement of the facts occurred before the date on which the treaty entered into force for the State.³⁶

33. Thus, pursuant to the principle of *pacta sunt servanda*, the obligations of the treaty are in effect for Peru only as of the date on which it entered into force for the State (*supra* para. 14) and, consequently, are applicable to those acts that constitute violations of a continuing or permanent nature; in other words, those that occurred before the entry into force of the treaty and persisted even after that date, because they continue to be perpetrated, as well as those independent acts that, during any proceedings could constitute specific and autonomous violations relating to denial of justice,³⁷ which, in this case, can be examined in light of the obligations assumed under the Inter-American Convention on Forced Disappearance of Persons. To argue otherwise would be equal to depriving the treaty and the guarantee of protection that it establishes of their practical effects,³⁸ with negative consequences for the presumed victims in the exercise of their right of access to justice.

34. However, the Court notes that Peru has questioned the existence of the supposed enforced disappearance and, thus, the eventual application of the Inter-American Convention on Forced Disappearance of Persons (*supra* para. 24). In this regard, the Court observes that this allegation is no longer a preliminary objection but constitutes an element related to the merits of the dispute; therefore, it is not appropriate to analyze it in this section.

³⁴ Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 59, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits, reparations and costs*. Judgment of November 20, 2012. Series C No. 253, para. 195.

³⁵ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, paras. 65 and 66, and *Case of Radilla Pacheco v. Mexico, supra*, para. 24.

³⁶ In the *Case of Gómez Palomino*, which concerned the disappearance of Santiago Gómez Palomino on July 9, 1992, the Court considered that "the State has not complied with the obligations imposed on it by Article 2 of the American Convention in order to ensure adequately the rights to life, personal liberty, and personal integrity of Santiago Gómez Palomino, and by Article I(b) of the Inter-American Convention on Forced Disappearance." *Case of Gómez Palomino v. Peru. Merits, reparations and costs*. Judgment of November 22, 2005. Series C No. 136, para. 110. Also, in the *Case of Anzualdo Castro*, which concerned the disappearance of Kenneth Ney Anzualdo Castro on December 16, 1993, the Court declared "that the State is responsible for the forced disappearance of Mr. Anzualdo Castro, perpetrated in the context of a systematic practice of this type of gross violation of human rights, promoted, practiced and tolerated by State agents at the time of the facts. Consequently, the State is responsible for the violation of the rights to personal liberty, personal integrity, life, and juridical personality, recognized in Articles 7(1), 7(6), 5(1), 5(2), 4(1) and 3 of the Convention, in relation to Article 1(1) thereof, and to Article I of the Inter-American Convention on Forced Disappearance." *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 103.

³⁷ Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections, supra*, para. 84, and *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits and reparations*. Judgment of November 20, 2007. Series C No. 168, para. 43.

³⁸ Cf. *Case of Radilla Pacheco v. Mexico, supra*, para. 24.

35. Based on the above, the Court rejects the preliminary objection filed by the State and, hence, is competent to examine and rule on the alleged violations of the Inter-American Convention on Forced Disappearance of Persons, as of March 15, 2002, the date that it entered into force for Peru.

V EVIDENCE

36. Based on the provisions of Articles 46, 47, 50, 57 and 58 of the Rules of Procedure, as well as on its case law with regard to evidence and its assessment,³⁹ the Court will examine and assess the documentary evidence forwarded by the parties at different procedural opportunities, and the statements, testimony and expert opinions provided by affidavit and during the public hearing. To this end it will abide by the principles of sound judicial discretion, within the corresponding legal framework.⁴⁰

A. *Documentary, testimonial and expert evidence*

37. The Court has received different documents presented as evidence by the State, the representatives, and the Inter-American Commission, and attached to their main briefs. In addition, the Court has received the affidavits prepared by Santa Fe Gaitán Calderón, Silvia Osorio Rivera, Edith Laritza Osorio Gaytán and Aquiles Román Atencio. It has also received the opinions of expert witnesses Carlos Alberto Jibaja Zárate and Esteban Segundo Abad Agurto. During the public hearing, the Court received the audiovisual testimony of the witness Simeón Retuerto Roque, and the testimony of the presumed victim Porfirio Osorio Rivera, as well as the opinion of expert witness Avelino Trifón Guillén Jáuregui.

B. *Admission of the evidence*

B.1. Admission of the documentary evidence

38. In this case, as in others, the Court accepts the probative value of those documents presented by the parties and the Commission at the proper procedural opportunity that were not contested or opposed, and the authenticity of which was not challenged.⁴¹

39. Regarding some documents indicated by electronic links, the Court has established that if a party provides at least the direct electronic link to the document that it cites as evidence and it can be accessed, neither legal certainty nor procedural balance is affected because it can be located

³⁹ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Luna López v. Honduras. Merits, reparations and costs*. Judgment of October 10, 2013. Series C No. 269, para. 10.

⁴⁰ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 76, and *Case of Luna López v. Honduras, supra*, para. 10.

⁴¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Luna López v. Honduras, supra*, para. 12.

immediately by the Court and the other parties.⁴² In this case, neither the parties nor the Commission opposed or made observations on the content and authenticity of such documents.⁴³

40. With regard to the video presented by the Commission,⁴⁴ which was not contested and the authenticity of which was not challenged, the Court will assess its content in the context of the body of evidence and applying the rules of sound judicial discretion.⁴⁵

41. Regarding the procedural occasion for the presentation of documentary evidence, according to Article 57(2) of the Rules of Procedure such evidence should generally be presented together with the briefs submitting the case, with motions and arguments, or answering the submission, as applicable. The Court recalls that evidence provided outside the appropriate procedural occasions is not admissible, unless it complies with one of the exceptions established in the said Article 57(2) of the Rules of Procedure: namely, *force majeure*, grave impediment, or if it refers to an event that occurred after the procedural moments indicated.⁴⁶

42. In its final written arguments, the State contested the admissibility of annexes 22, 41 and 44 of the brief with motions, arguments and evidence, because their contents differed from the documents listed in the said brief. In particular, it indicated that, instead of including the judgment of November 3, 2011, annex 22 included records of various hearing sessions; annex 41 contained a table with minimum wages, but also a table calculating loss of earnings, and annex 44, instead of including the records of the hearings of the second oral proceeding, included various powers of attorney and documents from members of Jeremías Osorio Rivera's family. In this regard, it affirmed that "this error by the representatives should not have been forwarded to the State, or affect the impartiality of an international litigation as regards providing equal opportunities to the Commission, the presumed victims and the defendant State." Accordingly, the State asked that the said annexes not be admitted and, therefore, not form part of the body of evidence in this case.

43. On this point, the Court notes that, on October 25, 2012, when sending their annexes to the motions and arguments brief, the representatives forwarded a "corrigendum with regard to the motions, arguments and evidence brief." Accordingly, a note of the Secretariat dated December 3, 2012, indicated the differences in the way in which the annexes numbered 22, 41 and 44 were

⁴² Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 34.

⁴³ The following documents were provided only by electronic link: several merits reports issued by the Inter-American Commission on Human Rights; several applications submitted to the Inter-American Court by the Inter-American Commission; the 1996 Annual Report of the Inter-American Commission; Law 26,926 published in *El Peruano* on February 21, 1998; the judgment delivered by the Special Criminal Chamber of the Supreme Court of Justice in case file No. A.V. 19–2001 on April 7, 2009; the judgment delivered by the Constitutional Court in case file No. 2488-2002-HC/TC of March 18, 2004; male life expectancy in 1991 in the rural areas of Peru according to the United Nations Population Fund sources; Fact Sheet No. 32 of the Office of the United Nations High Commissioner for Human Rights entitled "Human Rights, Terrorism and Counter-terrorism"; the *Manual de Derecho Internacional Humanitario and Derechos Humanos para las Fuerzas Armadas*, and the information that appears on the website of the *Sistema Integral de Salud (SIS)* [the State Health Care System].

⁴⁴ Forensic Team, 2011 video related to report 166-2011 of Case of 11,845: Peru (file before the Commission, volume II, folio 1155).

⁴⁵ Cf. *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of January 28, 2009. Series C No. 194, para. 93, and *Case of Vélez Restrepo and family members v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3, 2012. Series C No. 248, para. 64.

⁴⁶ Cf. *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala, supra*, para. 40, and *Case of Mémoli v. Argentina, supra*, para. 40.

identified in the offer of evidence contained in the motions, arguments and evidence brief, and in the list of errata submitted subsequently. The Court will therefore assess the admissibility of these annexes at the appropriate procedural moment and, at that time, it will take the appropriate decision, even though the State's allegation was time-barred.

44. Annex 22⁴⁷ contains records of the sessions of the public hearing during the second oral proceeding, held during the criminal trial for a crime against humanity – enforced disappearance – to the detriment of Jeremías Osorio Rivera. In view of the fact that another annex to the representatives' brief (No. 44 analyzed *infra*) was originally identified as "Records of sessions of hearings of the second oral proceeding," the Court considers that the evidence forwarded under annex 22 was opportunely offered under annex 44, as initially identified. In addition, it is pertinent to note that the State is aware of the said criminal trial and that some isolated records were also provided by the State itself;⁴⁸ therefore, their incorporation into the case file is necessary in order to assess adequately the proceedings and investigations conducted by the State. Consequently, it is in order to incorporate the said records into the body of evidence in this case.

45. Regarding annex 41,⁴⁹ the Court observes that the document added in the corrigendum consists in a "table calculating the loss of earnings." The Court finds that this is admissible because it merely details the calculation of the amount requested by the representatives for loss of earnings in their motions and arguments brief, and it will be assessed at the appropriate moment when referring to the reparations (*infra* para. 279).

46. Lastly, with regard to annex 44,⁵⁰ forwarding powers of attorney and documents of the members of Jeremías Osorio Rivera's family, the Court notes that their incorporation is pertinent in

⁴⁷ Annex 22, identified as "National Criminal Chamber, Case file No. 31-06-SPN, Judgment of November 4, 2011" and in the errata document as "National Criminal Chamber, Case file No 31-06-SPN, records of hearing session", contains the records of the session identified as: (1) "First session – November 16, 2010"; (2) "Second session – November 23, 2010"; (3) "Third session – December 7, 2010"; (4) "Fourth session – December 13, 2010"; (5) "Fifth session – December 21, 2010"; (6) "Seventh session – January 19, 2011"; (7) "Ninth session – January 27, 2011"; (8) "Eleventh session – February 17, 2011"; (9) "Thirteenth session – March 11, 2011"; (10) "Fifteenth session – March 29, 2011"; (11) "Sixteenth session – April 5, 2011"; (12) "Seventeenth session – April 7, 2011"; (13) "Eighteenth session – April 18, 2011"; (14) "Nineteenth session – April 26, 2011"; (15) "Twentieth session – May 5, 2011"; (16) "Twenty-first session – May 17, 2011"; (17) "Twenty-second session – May 26, 2011"; (18) "Twenty-third session – June 3, 2011"; (19) "Twenty-fourth session – June 9, 2011"; (20) "Twenty-fifth session – June 20, 2011"; (21) "Twenty-sixth session – July 5, 2011"; (22) "Twenty-seventh session – July 12, 2011"; (23) "Twenty-eighth session – July 14, 2011"; (24) "Twenty-ninth session – July 22, 2011"; (25) "Thirty-second session – August 15, 2011"; (26) "Thirty-third session – August 23, 2011"; (27) "Thirty-fourth session – September 6, 2011"; (28) "Thirty-fifth session – September 15, 2011"; (29) "Thirty-sixth session – September 20, 2011"; (30) "Thirty-seventh session – September 27, 2011"; (31) "Thirty-eighth session – October 4, 2011"; (32) "Thirty-ninth session – October 10, 2011", and (33) "Fortieth session – October 24, 2011."

⁴⁸ See, for example, annexes 91 and 92 to the State's answering brief.

⁴⁹ Annex 41, identified as "Table of minimum wages," appears in the corrigendum as "Table of minimum wages and table calculating loss of earnings."

⁵⁰ Annex 44, identified as "Records of sessions of hearings of the second oral proceeding," and in the corrigendum as "Powers of attorney and documents of the members of Jeremías Osorio Rivera's family," contains the powers granted to the members of the *Asociación Pro Derechos Humanos* (APRODEH) by the following: 1) Santa Fe Gaitán Calderón on August 15, 2012; 2) Edith Laritza Osorio Gaytán on August 9, 2012; 3) Neida Rocío Osorio Gaitán on August 9, 2012; 4) Vanessa Judith Osorio Gaitán on August 15, 2012; 5) Jersy Jeremías Osorio Gaitán on August 15, 2012; 6) Epifanía Alejandrina Osorio Rivera on October 1, 2012; 7) Elena Máxima Osorio Rivera (widow of Echevarría) on October 3, 2012; 8) Adelaida Osorio Rivera on October 3, 2012; 9) Silvia Osorio Rivera on October 3, 2012; 10) Mario Osorio Rivera on October 1, 2012, and 11) Porfirio Osorio Rivera on August 20, 2012. It also contains the following documents: 1) Official certificate of completion of secondary education of [Jersy J]eremías Osorio Rivera of October 5, 2012; 2) National identity card of Santa Fe Gaitán Calderón; 3) National identity card of Edith Laritza Osorio Gaytán; 4) National identity card of Neida Rocío Osorio Gaitán; 5) National identity card of Vanessa Judith Osorio Gaitán; 6) National identity card of Jersy Jeremías Osorio Gaitán; 7) National identity card of Silvia Osorio; 8) National identity card of Adelaida Osorio Rivera; 9) National identity card of

order to verify the personal data of the presumed victims in this case. Accordingly, it incorporates them under Article 58(a) of the Rules of Procedure, because it considers them useful and will assess them together with the body of evidence and as pertinent for this case.

47. During the public hearing (*supra* para. 9), the State presented supreme final judgment R.N. No. 1071-2012 issued by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013, in the context of the criminal proceeding based on the facts of this case, and a copy of this was handed to the representatives and to the Commission. Considering that it is useful in order to decide this case, and in the terms of Article 57(2) of the Rules of Procedure, the Court admits this probative element provided by the State because it refers to facts that occurred after the presentation of the answering brief. In addition, during the hearing, the representatives presented parts of the report of the Permanent Historical Commission of the Peruvian Army entitled "*En Honor a la Verdad*," published in Lima in 2010, as grounds for its objection to the opinion given by Mr. Abad Agurto, and a copy was provided to the State and to the Commission. The Court will consider any relevant information it contains in order to take a decision on this request by the representatives (*infra* para. 52).

48. With regard to the documents provided by the State⁵¹ and the representatives⁵² with their final written arguments, the Court incorporates them as they refer to events that took place after the presentation of the motions and arguments brief and of the answering brief that are relevant for deciding this case. Regarding Note No. 1323-2013-FSPNC-MP-FN of September 25, 2013, presented by the State without any justification as to why it was transmitted after the answering brief, the Court find that this document is time-barred because it refers to general information relating to the work of the Prosecutor General's Office over several years, "promoting the investigation and prosecution of cases of human rights violations"; hence the Court will not consider it in its decision.

49. With regard to the documents on costs and expenses sent by the representatives with their final written arguments,⁵³ the Court will only consider those that refer to new costs and expenses they incurred as a result of the proceedings before this Court; in other words, those incurred after the presentation of the motions and arguments brief.

B.2. Admission of the testimony and the expert opinions

50. The Court finds it pertinent to admit the testimony and expert opinions provided during the public hearing and by affidavit that are in keeping with the purpose defined by the acting President

Elena Máxima Osorio Rivera; 10) National identity card of Porfirio Osorio Rivera; 11) Birth certificate of Elena Máxima Osorio Rivera; 12) Birth certificate of Adelaida Osorio Rivera, and 13) Birth certificate of Mario Osorio Rivera.

⁵¹ Annex 1: Note No. 221-2013-DDHH-PJ of September 11, 2013, of the Principal Representative of the Judiciary before the National Human Rights Council, attaching supreme final judgment R.N. No. 1071-2012 issued by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013, in criminal proceedings File No. 1071-2012; Annex 2: Note No. 172-2013-DDHH/PJ of July 12, 2013, of the Principal Representative of the Judiciary before the National Human Rights Council regarding the execution of the said final judgment and consultation of supreme judicial files of July 11 and September 26, 2013, and Annex 3: Note No. 1323-2013-FSPNC-MP-FN of September 25, 2013, of the Coordinator of the National Superior Criminal Prosecution Service and the Supraprovincial Criminal Prosecution Services, related to information concerning the work of the Prosecutor General's Office "promoting the investigation and prosecution of cases of human rights violations."

⁵² Annex 1: The Judiciary's Office for Judicial Supervision, decision of August 21, 2013, and Annex 2: Ombudsman's Office, Report No. 162, "*A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso*" [After 10 years of truth, justice and reparation: progress, setbacks and challenges of a process that has not yet concluded], 2013.

⁵³ Annex 3: Table of expenses, hearing, August 29, and supporting documentation.

in the Order requiring them⁵⁴ and the purpose of this case, and they will be assessed in the corresponding chapter, together with the rest of the body of evidence, taking into account the observations of the parties. In addition, pursuant to this Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but must be evaluated together with the whole body of evidence in the proceedings, because they are useful insofar as they can provide further information on the presumed violations and their consequences.⁵⁵

51. During the public hearing, the representatives asked the Court not to accept the validity of the expert opinion of Esteban Segundo Abad Agurto provided by affidavit, considering that the author failed to cite the sources of his information, and it had been noted that parts were a literal copy from other reports.⁵⁶ In its final written arguments, the State indicated that, having analyzed the situation, it had "reconsidered its decision to offer and to use the said expert opinion as evidence," and expressly asked the Court not to take it into consideration because it was withdrawing it forthwith.

52. Taking into account the specific circumstances of the case, and having verified that several parts of the expert opinion are copied textually or paraphrased from the contents of the report entitled "*En Honor a la Verdad*" without this report having been cited in the opinion, the Court decides to accept the withdrawal of this document and, thus, it will not be considered part of the body of evidence in this case.

VI FACTS

A. Context

53. Starting at the beginning of the 1980s and up until the end of 2000, Peru endured a conflict between armed groups and members of the military and police forces.⁵⁷ In previous cases, this Court has recognized that this conflict intensified amid a systematic practice of human rights violations, including extrajudicial executions and the enforced disappearance of persons suspected of belonging to illegal armed groups, such as the Peruvian Communist Party, *Sendero Luminoso* (hereinafter "Shining Path") and the Túpac Amaru Revolutionary Movement (hereinafter "MRTA"), acts carried out by State agents on the orders of leaders of the military and police forces.⁵⁸

⁵⁴ The purposes of all these statements was established in the Order of the acting President of the Court for this case of July 8, 2013, first and fifth operative paragraphs, available on the Court's website at: http://www.corteidh.or.cr/docs/asuntos/osorio_08_07_13.pdf

⁵⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 22, para. 43, and *Case of Luna López v. Honduras, supra*, para. 16.

⁵⁶ Specifically, the representatives argued with regard to the expert's opinion that most of the paragraphs were copied from other reports without any reference, including information taken directly from *monografias.com* and from the report identified as "*En Honor a la Verdad*" of the Permanent Historical Commission of the Peruvian Army.

⁵⁷ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume I, Chapter 1, pp. 54 and 55 (evidence file, volume III, annex 2 to the submission of the case, folios 1187 and 1188). See also, *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 197.1.

⁵⁸ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 46; *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, para. 42; *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 63; *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 67(a); *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 72.2; *Case of the Miguel Castro Castro Prison v. Peru, supra*, para. 197.1, and *Case of La Cantuta v. Peru. Merits, reparations and costs*. Judgment of November

Meanwhile, the Peruvian Truth and Reconciliation Commission (hereinafter "CVR") has indicated that "the decision of [Shining Path] to initiate a so-called 'people's war' against the State was the fundamental cause of the commencement of the internal armed conflict in Peru."⁵⁹

54. According to the Final Report of the CVR in 2003,⁶⁰ the State's agents responsible for the counter-subversive effort used the enforced disappearance of militants, and possible members or supporters of the armed groups as a control mechanism, in order to dissuade the general population from cooperating with the armed groups.⁶¹ It is considered that, in Peru, enforced disappearance had three specific objectives: to obtain information about the insurgents or those suspected of insurgency; to eliminate subversives or supporters ensuring impunity, and to intimidate the general population and force it to side with the State authorities.⁶²

55. While the highest number of cases of enforced disappearance reported to the CVR during the armed conflict was recorded in 1983 and 1984 (40% of the total), between 1988 and 1993, the practice was used systematically by State agents as a counter-subversive mechanism.⁶³ Over this period, the Armed Forces replaced the Police Force in the tasks of internal control and counter-subversive efforts in the areas declared in a state of emergency.⁶⁴ The Armed Forces are attributed with the highest percentage of victims of this practice,⁶⁵ who correspond to individuals identified by the police authorities, the military forces or the paramilitary groups as presumed members, collaborators or supporters of Shining Path or the MRTA.⁶⁶

56. According to the CVR, the *modus operandi* used by the authors of enforced disappearance consisted in the selection of the victim, followed by his or her arrest, location in a temporary place of detention, transfer to a detention center, interrogation, torture, elimination decision, murder, and disappearance of the remains, using the State's resources, and it included the denial of the

29, 2006. Series C No. 162, para. 80.1 and 80.2. Also, *cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2 (evidence file, volume III, annex 12 to the submission of the case, folios 1502 a 1572).

⁵⁹ Truth and Reconciliation Commission, *Informe Final*, 2003, volume II, Chapter 1(1), p. 127; Available at <http://cverdad.org.pe/ifinal/>.

⁶⁰ In 2001, the State created the Truth and Reconciliation Commission "to clarify the process, the facts and responsibilities of the terrorist violence and of the violation of human rights that have occurred from May 1980 to November 2000, attributable to both the terrorist organizations and to State agents, as well as to propose initiatives designed to strengthen peace and harmony among Peruvians." This Commission issued its final report on August 27, 2003, and this was submitted to the different powers of the State, which recognized its conclusions and recommendations and acted in consequence, adopting policies that reflect the high value accorded to this institutional document. *Cf. Case of Baldeón García v. Peru*, *supra*, para. 72.1, and *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 10, 2007. Series C No. 167, paras. 89 and 91.

⁶¹ *Cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 72 (evidence file, volume III, annex 12 to the submission of the case, folio 1517).

⁶² *Cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 70 (evidence file, volume III, annex 12 to the submission of the case, folio 1515).

⁶³ *Cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, pp. 74 to 79 (evidence file, volume III, annex 12 to the submission of the case, folios 1519 to 1524).

⁶⁴ *Cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VIII, General conclusions, pp. 327 and 335 (evidence file, volume III, annex 13 to the submission of the case, folios 1586 and 1594).

⁶⁵ *Cf.* Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 81 (evidence file, volume III, annex 12 to the submission of the case, folio 1526).

⁶⁶ *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 54.1.

detention and concealment of information about what had happened to the detainee.⁶⁷ These stages were not necessarily carried out consecutively.⁶⁸

57. Similarly, the United Nations Working Group on Enforced or Involuntary Disappearances concluded that “the vast majority of the 3,004 cases of reported disappearances in Peru occurred between 1983 and 1992,” a time during which State’s counterinsurgency agents “were granted a great deal of latitude” and acted mainly in areas that were under a state of emergency, but also in other areas of Peru.⁶⁹

58. This Court has also ruled on the State’s policy that encouraged the perpetration of the enforced disappearance of those persons who were suspected of belonging to the insurgent groups in Peru.⁷⁰ In particular, the systematic practice of enforced disappearance was also fostered by the general situation of impunity of gross human rights violations that existed at the time, encouraged and tolerated by the absence of judicial guarantees and the ineffectiveness of the judicial institutions to deal with the systematic violation of human rights.⁷¹ In this regard, “in most cases, the complaints of the next of kin of the disappeared were followed by inaction or timid and ineffective actions of the Judiciary and of the Public Prosecution Service; [which] was proved by their unwillingness to investigate, and even the obstruction of investigations.”⁷² The CVR also established that the Judiciary had not complied satisfactorily with its mission to end the impunity of State agents who had committed gross human rights violations, which contributed to this situation.⁷³

B. The gross human rights violations in the province of Cajatambo during the internal armed conflict

59. The province of Cajatambo is located in the central occidental part of the Andean cordillera in the extreme northeast of the department of Lima, at approximately 3,376 meters above sea level.⁷⁴

60. According to the final report of the CVR, starting in 1985, Shining Path began to execute armed operations against the inhabitants of Cajatambo and other highland provinces in the north

⁶⁷ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 84 (evidence file, volume III, annex 12 to the submission of the case, folio 1529).

⁶⁸ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 84 (evidence file, volume III, annex 12 to the submission of the case, folio 1529).

⁶⁹ Cf. United Nations, Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1998/43, 12 January 1998, para. 297 (evidence file, volume III, annex 14 to the submission of the case, folio 1606).

⁷⁰ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru*, *supra*, para. 76; *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 60.9; *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 54.1 to 54.4, and *Case of La Cantuta v. Peru*, *supra*, paras. 83 and 84.

⁷¹ Cf. *Case of La Cantuta v. Peru*, *supra*, para. 92, and *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*, *supra*, para. 136.

⁷² Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 110 (evidence file, volume III, annex 14 to the submission of the case, folio 1555).

⁷³ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume VIII, General conclusions, paras. 123 a 131 (evidence file, volume III, annex 13 to the submission of the case, folios 1595 and 1596).

⁷⁴ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume IV, Chapter 1.6, p. 468; Available at <http://cverdad.org.pe/ifinal/>.

of the department of Lima.⁷⁵ One of the first acts of the group was the murder of the Deputy Mayor of Gorgor.⁷⁶ After 1987, Shining Path's strategy in this region consisted in actions such as annihilating authorities, attacking police posts, and murdering the villagers who resisted their rules of conduct.⁷⁷

61. In response to the growing presence of Shining Path in this area, a state of emergency was declared and, at the beginning of the 1990s, the Army was put in control of public order for a prolonged period.⁷⁸

62. The violence attained its greatest intensity from 1989 to 1993.⁷⁹ It is known that, between April 1991 and May 1992, at least three villagers – including Jeremías Osorio Rivera – from the community of Nunumia, Gorgor district, were detained and taken to the Cajatambo Counter-subversive Base, and nothing is known of their whereabouts since that time.⁸⁰

C. The Palmira Plan of Operations

63. The "Palmira Plan of Operations" was executed from April 22 to 30, 1991. Its purpose was to conduct patrols and "to capture terrorists" in the area of Palmira, as well as to organize civic activities and self-defense committees.⁸¹ The Palmira Plan of Operations was supposed to be executed by all the Counter-subversive Bases of the 77th Armored Infantry Battalion⁸² that were under the orders of Lieutenant Colonel Arnulfo Roncal Vargas, who was also the Military and Political Chief of Security Zone No. 1.⁸³

64. Under the Palmira Plan of Operations, on April 22, 1991, an Army patrol from the Cajatambo Counter-subversive Base with around 20 to 30 soldiers, led by Peruvian Army

⁷⁵ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume IV, Chapter 1.6, pp. 470 to 472; Available at <http://cverdad.org.pe/ifinal/>.

⁷⁶ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume IV, Chapter 1.6, p. 470; Available at <http://cverdad.org.pe/ifinal/>.

⁷⁷ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume IV, Chapter 1.6, pp. 473 to 480; Available at <http://cverdad.org.pe/ifinal/>.

⁷⁸ Cf. Supreme Decree No. 016-DE/SG of April 2, 1991 (evidence file, volume IX, annex 16 to the State's answering brief, folio 4649).

⁷⁹ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume IV, Chapter 1.6, p. 473; Available at <http://cverdad.org.pe/ifinal/>.

⁸⁰ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, Annex IV, volume XVII, Cases of the department of Lima reported to the CVR, province of Cajatambo, pp. 131 to 133 (evidence file, volume IV, annex 18 to the submission of the case, folios 1655 to 1657).

⁸¹ Cf. Testimonial statement made by Arnulfo Roncal Vargas before the Military Investigating Judge on September 22, 1993 (evidence file, volume IV, annex 26 to the submission of the case, folio 1763); Statement made by the witness Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State's answering brief, folios 4663 and 4664); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State's answering brief, folio 4771), and Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4732 and 4746).

⁸² Cf. Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4704).

⁸³ Cf. Statement made by the witness Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State's answering brief, folio 4663), and Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State's answering brief, folio 4766).

Lieutenant Juan Carlos César Tello Delgado,⁸⁴ known by his apocryphal name and pseudonym “Andrés López Cárdenas” and “Conan,”⁸⁵ installed itself in a building in the peasant community of Nunumia, Gorgor district, province of Cajatambo.⁸⁶

D. The facts of this case

65. Jeremías Osorio Rivera was born on December 4, 1962, in the Gorgor district, province of Cajatambo, department of Lima,⁸⁷ and he had seven siblings.⁸⁸ In 1985 he began to live with Santa Fe Gaitán Calderón, with whom he formed his own family composed of four children.⁸⁹ Jeremías Osorio Rivera lived with his family unit and his mother, Juana Rivera Lozano, near the bridge of the community of Cochás Paca located in Gorgor district, where he worked the land, raised animals, and sold sheep to the villagers.⁹⁰ Jeremías Osorio Rivera took part in community activities against Shining Path.⁹¹

⁸⁴ Cf. Statement made by Juan Carlos César Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folio 4604).

⁸⁵ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4769); Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4705), and Statement made by Juan Carlos César Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folio 4605).

⁸⁶ Cf. Expansion of the preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Court of Lima on May 23, 1994 (evidence file, volume IV, annex 68 to the submission of the case, folio 1882), and Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4770).

⁸⁷ Cf. Birth certificate of Jeremías Osorio Rivera (file of proceedings before the Commission, volume I, folio 213).

⁸⁸ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1670); National identity card of Elena Máxima Osorio Rivera (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4417); National identity card of Porfirio Osorio Rivera (file of proceedings before the Commission, volume I, folio 188); National identity card of Adelaida Osorio Rivera (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4416); National identity card of Silvia Osorio Rivera (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4419); Birth certificate of Mario Osorio Rivera (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4423), and Report of the psychological evaluations made by Carlos Alberto Jibaja Zárate on August 15, 2013 (evidence file, volume XI, affidavits, folio 5349).

⁸⁹ Cf. Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 22 to the submission of the case, folio 1684); Birth certificate of Edith Laritza Osorio Gaytán (evidence file, volume IV, annex 21 to the submission of the case, folio 1676); Birth certificate of Neida Rocío Osorio Gaitán (evidence file, volume IV, annex 21 to the submission of the case, folio 1677) and Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1681); Birth certificate of Vannesa Judith Osorio Gaitán (evidence file, volume IV, annex 21 to the submission of the case, folio 1678) and Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1682); Birth certificate of Jersy Jeremías Osorio Gaitán (evidence file, volume IV, annex 21 to the submission of the case, folio 1679) and Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1680).

⁹⁰ Cf. Preliminary statement made by Santa Fe Gaitán Calderón before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on November 19, 2004 (evidence file, volume IV, annex 23 to the submission of the case, folio 1688); Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5321).

⁹¹ Cf. Testimony No. 100072 before the CVR provided by Porfirio Osorio Rivera (evidence file, volume IV, annex 24 to the submission of the case, folio 1692); Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5320), and Certification of April 30, 1991, with signatures and electoral card numbers of

66. During the morning of April 28, 1991, Jeremías Osorio Rivera went to the village of Nunumia to take part in a sports event.⁹² When the event had ended, during the evening, and while a celebration was being held in the Nunumia community hall, an explosion and/or shots were heard and, as a result of this, members of the military patrol under the orders of Lieutenant Tello Delgado surrounding the building.⁹³

67. When they entered the building, it was discovered that Jeremías Osorio Rivera had got into a fight with his cousin, Gudmer Tulio Zárate Osorio, and it was evident that they had both had far too much to drink; consequently, the two individuals involved in the fight were detained.⁹⁴ According to Lieutenant Tello Delgado, Mr. Osorio Rivera “was carrying firecrackers and a revolver” and Gudmer Tulio Zárate Osorio “had an Army camouflage jacket.”⁹⁵ The detainees were taken to the building in Nunumia occupied by the Army patrol and spent the night there.⁹⁶

68. On April 29, 1991, Lieutenant Tello Delgado sent a radiogram to his superior advising him of the detention of Jeremías Osorio Rivera, who he identified as “comrade Gashpao,” and indicating that “he was carrying a .38 caliber revolver and explosive charges.”⁹⁷ However, no confiscation

residents of the community of Cochas Paca (evidence file, volume IV, annex 31 to the submission of the case, folios 1779 and 1780).

⁹² Cf. Preliminary statement made by Santa Fe Gaitán Calderón before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on November 19, 2004 (evidence file, volume IV, annex 23 to the submission of the case, folio 1688); Testimonial statement made by Juana Rivera Lozano before the Court for Civil and Criminal Matters of Cajatambo on December 19, 2005 (evidence file, volume IV, annex 29 to the submission of the case, folio 1772), and Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folios 4746 and 4747).

⁹³ Cf. Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5321); Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4767), and Statement made by Juan Carlos Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folios 4610 to 4612).

⁹⁴ Cf. Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4747); Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4767), and Statement made by Juan Carlos Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folios 4610 to 4612).

⁹⁵ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4767); Statement made by Juan Carlos Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folios 4610 to 4612), and Statement made by the witness Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State’s answering brief, folio 4665).

⁹⁶ Cf. Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4747), and Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4767).

⁹⁷ Copy of radiogram No. 628 of April 29, 1991 (evidence file, volume IX, annex 25 to the State’s answering brief, folio 4805). See also, Testimonial statement made by Arnulfo Roncal Vargas before the Fourth Supraprovincial Court on March 12, 2007 (evidence file, volume IX, annex 17 to the State’s answering brief, folios 4652 and 4653), and Statement

record was drawn up.⁹⁸ Jeremías Osorio Rivera and his cousin Gudmer Tulio Zárata Osorio remained detained all that day, because the members of the battalion devoted their efforts to repelling an attack by Shining Path.⁹⁹

69. Hearing of the detention, Aquiles Román Atencio, a resident of Cochas Paca and a friend of Mr. Osorio Rivera, went to the place where he was held that same day to inquire about his detention, and was told that “the victim was detained because he was a terrorist and was carrying a police weapon.”¹⁰⁰ During the day, Porfirio Osorio Rivera, brother of the presumed victim, became aware of the detention and went, accompanied by his mother and sister-in-law, to the place where the presumed victim was being held.¹⁰¹ They asked for their family member, and the soldiers responded that no one was detained there. Then, Lieutenant Tello Delgado appeared and said that “[...] they did not need any advocacy efforts there; that [his] brother had committed a serious crime.”¹⁰² Before they could obtain further information, Lieutenant Tello Delgado left to conduct a military operation.¹⁰³ Porfirio Osorio Rivera remained in that place until the members of the Battalion returned at 7 p.m., and during this time he tried to obtain more information and to speak to his brother, but was unable to do so. He waited until 10 p.m., when he was asked to leave.¹⁰⁴

made by the witness Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State’s answering brief, folio 4674).

⁹⁸ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4775), and Statement made by Juan Carlos Tello Delgado before the National Criminal Chamber during the fourth session of the oral proceeding held on December 13, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folio 4613).

⁹⁹ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folios 4768 and 4775), and Copy of radiogram No. 635 of April 30, 1991 (evidence file, volume IX, annex 26 to the State’s answering brief, folio 4807).

¹⁰⁰ Statement made by Aquiles Román Atencio during the twelfth session of the oral proceeding held on August 5, 2008, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4727).

¹⁰¹ Cf. Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 22 to the submission of the case, folios 1684 and 1685); Statement made by Santa Fe Gaitán Calderón before the National Criminal Chamber during the twelfth session of the oral proceeding held on March 4, 2011 (evidence file, volume IX, annex 28 to the State’s answering brief, folio 4815); Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304); Testimonial statement made by Juana Rivera Lozano before the Court for Civil and Criminal Matters of Cajatambo on December 19, 2005 (evidence file, volume IV, annex 29 to the submission of the case, folio 1772), and Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folios 1671 and 1672).

¹⁰² Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671).

¹⁰³ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folios 4768 and 4775), and Copy of radiogram No. 635 of April 30, 1991 (evidence file, volume IX, annex 26 to the State’s answering brief, folio 4807).

¹⁰⁴ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671), and Statement made by Porfirio Osorio Rivera before the Inter-American Court during the public hearing held on August 29, 2013.

70. On April 30, 1991, at 6 a.m., Gudmer Tulio Zárate Osorio was released without any record of his release or other document signed by the detainee being issued, and “because no evidence had been found that would justify his detention.”¹⁰⁵ To the contrary, it was considered necessary to await orders from above to decide whether it was appropriate to release Jeremías Osorio Rivera, because, supposedly, he had fired the shot.¹⁰⁶ That same day, Santa Fe Gaitán Calderón and Porfirio Osorio Rivera went to his place of detention to try and give him breakfast and see him, but this was not permitted.¹⁰⁷ While there, they heard Lieutenant Tello Delgado stating that the patrol would be leaving Nunumia the same day, which led Porfirio Osorio Rivera to try and obtain the signatures of members of the community to certify the good conduct of his brother and that he had no links to Shining Path, in order to achieve his release.¹⁰⁸

71. At around 10 a.m. on April 30, 1991, the military patrol began its return to the town of Cajatambo.¹⁰⁹ For the return journey to Cajatambo the members of the Battalion used horses loaned by the community, on one of which they mounted Mr. Osorio Rivera; they were accompanied by four members of the community who would return with the horses.¹¹⁰ Several community members, including his family members, watched as Jeremías Osorio Rivera was led away with his face covered by a hood and his hands tied.¹¹¹ This was the last time that Jeremías Osorio Rivera’s mother, permanent companion and brother saw him.¹¹²

¹⁰⁵ Preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Judge on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folio 1870).

¹⁰⁶ Cf. Statement made by the witness Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State’s answering brief, folios 4673 to 4677), and Testimonial statement made by Arnulfo Roncal Vargas during the nineteenth session of the oral proceeding held on September 25, 2008, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4733).

¹⁰⁷ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671); Testimonial statement made by Juana Rivera Lozano before the Court for Civil and Criminal Matters of Cajatambo on December 19, 2005 (evidence file, volume IV, annex 29 to the submission of the case, folio 1772); Preliminary statement made by Santa Fe Gaitán Calderón before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves on November 19, 2004 (evidence file, volume IV, annex 23 to the submission of the case, folios 1688 and 1689); Statement made by Santa Fe Gaitán Calderón before the National Criminal Chamber during the twelfth session of the oral proceeding held on March 4, 2011 (evidence file, volume IX, annex 28 to the State’s answering brief, folio 4816), and Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304).

¹⁰⁸ Cf. Certification dated April 30, 1991, with the signatures and electoral identity card numbers of residents of the community of Cochas Paca (evidence file, volume IV, annex 31 to the submission of the case, folios 1779 and 1780); Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671), and Statement made by Porfirio Osorio Rivera before the Inter-American Court during the public hearing held on August 29, 2013.

¹⁰⁹ Cf. Copy of radiogram No. 635 of April 30, 1991 (evidence file, volume IX, annex 26 to the State’s answering brief, folio 4807).

¹¹⁰ Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4769); Statement made by Juan Carlos César Tello Delgado before the National Criminal Chamber during the fifth session of the oral proceeding held on December 21, 2010 (evidence file, volume IX, annex 15 to the State’s answering brief, folio 4622); Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folios 3542 and 3543), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322).

¹¹¹ Cf. Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 22 to the submission of the case, folio 1685); Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304); Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542);

72. The four members of the community accompanied the patrol until it reached Piluyaco, where their horses were returned to them. The members of the patrol continued to Cajatambo on foot,¹¹³ leading Jeremías Osorio Rivera by a rope.¹¹⁴ Before leaving the patrol, one of the community members asked to talk to Jeremías Osorio Rivera and Lieutenant Tello Delgado gave him permission.¹¹⁵ To this end, they took off the hood and this allowed Aquiles Román Atencio to see that Mr. Osorio Rivera's face was bruised.¹¹⁶ The witness also indicated that Mr. Osorio Rivera requested him to ask "his mother or his companion to go to a Cajatambo."¹¹⁷

73. On May 1, 1991, Porfirio and Silvia Osorio Rivera, the presumed victim's siblings went to the Cajatambo Counter-subversive Base to find out about their brother's situation. There, a sergeant told them that no detainees had arrived and that Lieutenant Tello Delgado was not there, because he had gone to the hot springs to bathe; therefore, they withdrew for the day.¹¹⁸

Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322); Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671), and Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folios 1782 and 1783).

¹¹² Cf. Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 22 to the submission of the case, folio 1685); Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304); Testimonial statement made by Juana Rivera Lozano before the Court for Civil and Criminal Matters of Cajatambo on December 19, 2005 (evidence file, volume IV, annex 29 to the submission of the case, folio 1772), and Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folios 1782 and 1783).

¹¹³ Cf. Statement made by Juan Carlos César Tello Delgado before the National Criminal Chamber during the fifth session of the oral proceeding held on December 21, 2010 (evidence file, volume IX, annex 15 to the State's answering brief, folio 4622); Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State's answering brief, folio 4767); Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322).

¹¹⁴ Cf. Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542).

¹¹⁵ Cf. Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322).

¹¹⁶ Cf. Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322).

¹¹⁷ Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folio 5322). See also, Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3542).

¹¹⁸ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671), and Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310).

74. On the morning of May 2, 1991, Porfirio and Silvia Osorio Rivera returned to the Cajatambo Counter-subversive Base where they met Lieutenant Tello Delgado, who informed them that Jeremías Osorio Rivera had been released the previous day and, in view of the insistence of the presumed victim's family members, showed them a document relating to the release.¹¹⁹ According to the version of Lieutenant Tello Delgado, Porfirio Osorio Rivera was not shown the "record of release" (*infra* para. 130), but rather a radiogram ordering the release.¹²⁰ According to the record, his release had been ordered because it had been concluded that he was not "a terrorist."¹²¹

75. Porfirio Osorio Rivera proceeded at once to the home of his brother in Cochas Paca, where they informed him that they had not seen Jeremías; accordingly, the presumed victim's next of kin began to look for him in different places where they presumed he could be.¹²² However, to this day, there is no information on the whereabouts of Jeremías Osorio Rivera.

76. Since they could not find Jeremías Osorio Rivera, on May 3, 1991, Porfirio and Silvia Osorio Rivera went to the offices of the Cajatambo Prosecution Service to file a criminal complaint against Lieutenant Tello Delgado. At the same time, Lieutenant Tello Delgado went to the Prosecution Service offices and confronted Porfirio Osorio Rivera. Owing to this situation the latter was unable to file the complaint that day, and also because the Prosecutor's requested that he go to Lima.¹²³

E. Judicial proceedings relating to the disappearance of Jeremías Osorio Rivera

E.1. The criminal proceeding opened in the Provincial Prosecution Service for Civil and Criminal Matters and the Cajatambo Investigating Court (file No. 24-91)

77. On May 9, 1991, Porfirio Osorio Rivera filed a criminal complaint before the Provincial Prosecution Service for Civil and Criminal Matters against the Peruvian Army Lieutenant known as "Conan" (pseudonym of Lieutenant Juan Carlos César Tello Delgado), as author of the

¹¹⁹ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folios 1671 and 1672); Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folio 1784), and Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310).

¹²⁰ Cf. Statement made by Juan Carlos César Tello Delgado before the National Criminal Chamber during the fifth session of the oral proceeding held on December 21, 2010 (evidence file, volume IX, annex 15 to the State's answering brief, folio 4626).

¹²¹ Cf. Statement made by Arnulfo Roncal Vargas before the National Criminal Chamber during the fourteenth session of the oral proceeding held on March 18, 2011 (evidence file, volume IX, annex 18 to the State's answering brief, folio 4677), and Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4733).

¹²² Cf. Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 22 to the submission of the case, folio 1685); Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310), and Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folio 1784).

¹²³ Cf. Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310); Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1672); Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folios 1784 and 1785), and Statement made by Porfirio Osorio Rivera before the Inter-American Court during the public hearing held on August 29, 2013.

disappearance of Jeremías Osorio Rivera.¹²⁴ On May 17, 1991, he expanded the said complaint to include the offenses of abduction and subsequent murder.¹²⁵

78. On May 24, 1991, the Provincial Prosecution Service for Civil and Criminal Matters decided to forward Porfirio Osorio Rivera's complaint to the military jurisdiction, because the accused was a Peruvian Army officer on active duty at the time of the facts.¹²⁶ Porfirio Osorio Rivera filed an appeal against this decision on May 28, 1991,¹²⁷ which was decided favorably on June 20, 1991, ordering that the investigations be continued in the ordinary jurisdiction.¹²⁸

79. On June 28, 1991, the criminal complaint against "Andrés López Cárdenas" (apocryphal name of Juan Carlos César Tello Delgado) was formalized for the offenses of the violation of personal liberty and subsequent murder of Jeremías Osorio Rivera.¹²⁹ The Cajatambo Investigating Court, in a ruling of July 10, 1991, decided to open the preliminary investigation only for the offense of the violation of the personal liberty of Jeremías Osorio Rivera and ordered the reception of the testimony of the complainant, the statement of the accused, and the testimonial statements of Gudmer Tulio Zárate Osorio and others who could contribute to the investigation, as well as the reconstruction of the events.¹³⁰ The order to open the preliminary investigation also decided that the murder complaint should be returned to the prosecutor so that the latter could investigate this further, because no explanation had been provided as to "the way this crime had been committed and, in particular, the body, as evidence."¹³¹ The prosecutor appealed this ruling on July 16, 1991.¹³²

80. On August 13, 1991, Porfirio Osorio Rivera submitted a brief to the Cajatambo Investigating Court requesting an on-site inspection of the place where his brother had been detained in Nunumia, and the confrontation between the accused and the testimony of several witnesses of the events.¹³³ On August 26, 1991, the Cajatambo Investigating Court ordered that these measures be taken and established dates for implementing them.¹³⁴ In a decision of September 23, 1991, the Provincial Prosecution Service for Civil and Criminal Matters requested a special time frame of 30

¹²⁴ Cf. Criminal complaint of May 7, 1991, presented on May 9, 1991, before the Cajatambo Provincial Prosecution Service (evidence file, volume IX, annex 32 to the State's answering brief, folios 4859 and 4860).

¹²⁵ Cf. Expansion of the complaint on May 17, 1991 (evidence file, volume IX, annex 33 to the State's answering brief, folio 4862).

¹²⁶ Cf. Ruling issued by the Provincial Prosecution Service for Civil and Criminal Matters on May 24, 1991 (evidence file, volume IX, annex 34 to the State's answering brief, folio 4864).

¹²⁷ Cf. Remedy of complaint of May 27, 1991, addressed to the Cajatambo Provincial Prosecutor and presented on May 28, 1991 (evidence file, volume IV, annex 40 to the submission of the case, folio 1814).

¹²⁸ Cf. Ruling issued by the Superior Prosecutor, Dean of the Judicial District of Callao on June 20, 1991 (evidence file, volume IX, annex 35 to the State's answering brief, folio 4866).

¹²⁹ Cf. Complaint No. 23-91-MP-FPMC of June 28, 1991, filed before the Cajatambo Investigating Judge by the Cajatambo Provincial Prosecutor (evidence file, volume IX, annex 36 to the State's answering brief, folios 4868 and 4869).

¹³⁰ Cf. Order to open the preliminary investigation issued by the Court for Civil and Criminal Matters of Cajatambo on July 10, 1991 (evidence file, volume X, annex 37 to the State's answering brief, folios 4871 and 4872).

¹³¹ Order to open the preliminary investigation issued by the Court for Civil and Criminal Matters of Cajatambo on July 10, 1991 (evidence file, volume X, annex 37 to the State's answering brief, folios 4871 and 4872).

¹³² Cf. Appeal filed by the Cajatambo Provincial Prosecutor on July 16, 1991 (evidence file, volume X, annex 37 to the State's answering brief, folio 4872).

¹³³ Cf. Brief of August 13, 1991, presented by Porfirio Osorio Rivera to the Cajatambo Investigating Judge (evidence file, volume VII, annex 17 to the brief with motions, arguments and evidence, folio 3639).

¹³⁴ Cf. Order issued by the Cajatambo Investigating Judge on August 16, 1991 (evidence file, volume X, annex 38 to the State's answering brief, folio 4874).

days to execute the measures requested.¹³⁵ The Cajatambo Investigating Judge granted the extension requested and set the date of October 30, 1991, for the on-site inspection.¹³⁶ This measure was conditional on Mr. Osorio Rivera providing the transport and, to this end, he obtained 20 horses.¹³⁷ The on-site inspection was not made on the date set owing to a strike by court personnel. Consequently, Porfirio Osorio requested a new date and time for making the inspection.¹³⁸ There is no record that the said measure has been taken in the context of the ordinary proceeding conducted before the Cajatambo Investigating Court.

81. On November 6, 1991, the Cajatambo Investigating Judge requested, by rogatory commission, that different expert appraisals be carried out: graphology and dactylography analyses of the signature and fingerprint on the record of the release of Jeremías Osorio Rivera.¹³⁹ The expert reports revealed that the signature on the record of release had been written by Jeremías Osorio Rivera because its characteristics were consistent with the signature that appeared on the electoral roll; regarding the fingerprint, it was concluded that it did not correspond to the right index finger, but could correspond to another finger.¹⁴⁰

82. On January 13, 1992, the Provincial Prosecution Service for Civil and Criminal Matters noted that the Cajatambo Investigating Judge had absented himself without leaving a replacement.¹⁴¹ Shortly afterwards, on February 3, 1992, Porfirio Osorio Rivera asked to expand the complaint so that it would be investigated for the crime of enforced disappearance defined in article 323 of the Peruvian Criminal Code.¹⁴² Before issuing a decision on the expansion, the Provincial Prosecution Service for Civil and Criminal Matters decided, on February 10, 1992, that there was insufficient evidence to define the offense of abduction, or substantive indications to infer the criminal responsibility and/or authorship of Lieutenant Tello Delgado, and requested the “definitive archive of the matter.”¹⁴³ On February 27, 1992, the Provincial Prosecution Service for Civil and Criminal Matters admitted Porfirio Osorio Rivera’s request and expanded the complaint against Lieutenant Tello Delgado as author of the offense of disappearance.¹⁴⁴ On March 6, 1992 the Cajatambo

¹³⁵ Cf. Decision No. 92-91-MP-FPMC issued by the Cajatambo Provincial Prosecutor on September 23, 1991 (evidence file, volume X, annex 39 to the State’s answering brief, folio 4876).

¹³⁶ Cf. Order issued by the Cajatambo Investigating Judge on October 15, 1991 (evidence file, volume X, annex 40 to the State’s answering brief, folio 4878).

¹³⁷ Brief of December 6, 1991, addressed to the Cajatambo Investigating Judge (evidence file, volume IV, annex 48 to the submission of the case, folio 1832).

¹³⁸ Cf. Brief of December 6, 1991, addressed to the Cajatambo Investigating Judge (evidence file, volume IV, annex 48 to the submission of the case, folio 1832).

¹³⁹ Cf. Rogatory commission of the Cajatambo Investigating Judge of November 6, 1991, addressed to the sitting Investigating Judge of the Capital-Lima (evidence file, volume X, annex 41 to the State’s answering brief, folio 4881).

¹⁴⁰ Cf. Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folios 4737 and 4738), and Criminalistics Directorate of the Peruvian National Police, Central Laboratory Subdirector, Graphology Report No. 2110/91 of December 16, 1991 (evidence file, volume X, annex 42 to the State’s answering brief, folios 4883 to 4885).

¹⁴¹ Cf. Decision No. 02-92-MP-FPMC issued by the Provincial Prosecution Service for Civil and Criminal Matters on January 13, 1992 (evidence file, volume IV, annex 49 to the submission of the case, folio 1834).

¹⁴² Cf. Brief of February 3, 1992, addressed to the Cajatambo Investigating Court (evidence file, volume IV, annex 50 to the submission of the case, folio 1836).

¹⁴³ Cf. Decision No. 11-92-MP-FPMC issued by the Provincial Prosecution Service for Civil and Criminal Matters on February 10, 1992 (evidence file, volume X, annex 43 to the State’s answering brief, folios 4887 and 4888).

¹⁴⁴ Cf. Expansion of the complaint established by the Provincial Prosecution Service for Civil and Criminal Matters on February 27, 1992 (evidence file, volume X, annex 44 to the State’s answering brief, folios 4890 and 4891).

Investigating Court decided to expand the criminal proceeding for the offense of enforced disappearance under article 323 of the Criminal Code.¹⁴⁵

83. On June 11, 1992, the Provincial Prosecution Service for Civil and Criminal Matters issued a ruling indicating that article 323 of the Criminal Code had had been revoked by article 22 of Decree Law No. 25,475 of May 5, 1992, which established the penalties for terrorism offenses and the procedures for the investigation, preliminary proceeding, and prosecution of such offenses.¹⁴⁶ Consequently, on June 12, 1992, the Cajatambo Investigating Court decided to archive the preliminary investigation for the offense of enforced disappearance definitively.¹⁴⁷ Also, on June 30, 1992, the Cajatambo Investigating Court reached the conclusion that it was not appropriate to open an investigation against Lieutenant Tello Delgado for the offense of murder, "since there was no evidence" and ordered that the investigations continue against those who might be responsible.¹⁴⁸ The Cajatambo Provincial Prosecutor filed an appeal against this decision.¹⁴⁹

84. Also, on June 11, 1992, the Permanent War Council of the Army's Second Judicial Zone challenged the competence of the Cajatambo Investigating Court, in view of the fact that "the accused is an officer of the Peruvian Army and that the events occurred in the Emergency Zone as a result of his duties"; thus, they came under the "jurisdiction and competence of the military jurisdiction."¹⁵⁰ On July 22, 1992, the Cajatambo Investigating Court disqualified itself from hearing the proceeding, owing to the dispute of competence that had been filed and because a parallel proceeding was underway against Lieutenant Tello Delgado in the Army's Second Judicial Zone.¹⁵¹ On November 25, 1992, file 24-91 was forwarded to be joined to the file opened in the military jurisdiction.¹⁵²

E.2. The criminal proceeding opened in the military jurisdiction (file No. 859-92)

85. On June 5, 1991, the Army's 18th Armored Division issued a report in which it recommended that the complaint filed against Lieutenant Tello Delgado by the Provincial Prosecution Service for Civil and Criminal Matters be submitted to the consideration of the Army's Second Judicial Zone.¹⁵³ On June 13, 1991, the complaint against Lieutenant Tello Delgado was filed before the Permanent War Council of the Second Judicial Zone for the presumed offense of the

¹⁴⁵ Cf. Decision issued by the Judge of First Instance (standing in for the permanent judge who was on vacation) on March 6, 1992 (evidence file, volume X, annex 45 to the State's answering brief, folio 4893).

¹⁴⁶ Cf. Decree Law No. 25,475 of May 5, 1992 (evidence file, volume IV, annex 54 to the submission of the case, folios 1845 to 1848).

¹⁴⁷ Cf. Decision issued by the Cajatambo Investigating Court on June 12, 1992 (evidence file, volume X, annex 46 to the State's answering brief, folio 4895).

¹⁴⁸ Cf. Decision issued by the Cajatambo Investigating Court on June 30, 1992 (evidence file, volume X, annex 47 to the State's answering brief, folios 4897 and 4898).

¹⁴⁹ Cf. Appeal filed by the Cajatambo Provincial Prosecutor on July 2, 1992 (evidence file, volume X, annex 48 to the State's answering brief, folio 4900).

¹⁵⁰ Note No. 619-92/sec/2daZJE of June 11, 1992 (evidence file, volume X, annex 49 to the State's answering brief, folio 4902).

¹⁵¹ Cf. Decision issued by the Cajatambo Investigating Court on July 22, 1992 (evidence file, volume X, annex 50 to the State's answering brief, folios 4904 and 4905).

¹⁵² Cf. Decision issued by the Permanent War Council of the Army's Second Judicial Zone on November 25, 1992 (evidence file, volume X, annex 56 to the State's answering brief, folio 4918).

¹⁵³ Cf. Report No. 294AJ.18ava.DB issued by the Army's 18th Armored Division on June 5, 1991 (evidence file, volume X, annex 51 to the State's answering brief, folios 4907 and 4908).

disappearance, abduction and subsequent murder of Jeremías Osorio Rivera.¹⁵⁴ On June 8, 1992, the military Judge-Advocate considered it admissible to open an investigation against Lieutenant Tello Delgado “for the offenses of abuse of authority and violation of personal liberty to the detriment of the civilian Jeremías Osorio Rivera,” giving jurisdiction to the competent military court and indicating that a dispute of competence be filed before the Cajatambo Investigating Judge.¹⁵⁵ On June 11, 1992, the Permanent War Council of the Army’s Second Judicial Zone opened a criminal investigation against Lieutenant Tello Delgado for the offenses of abuse of authority and violation of personal liberty, giving jurisdiction to the Third Permanent Military Court of Lima so that it could file the dispute on competence with the ordinary jurisdiction.¹⁵⁶

86. On October 5, 1992, the Third Permanent Military Court began to consider the case and ordered that measures be taken to clarify the events that had been denounced.¹⁵⁷ On November 25, 1992, file No. 24-91 was forwarded so that it could be joined with file No. 859-92.¹⁵⁸ On June 4, 1993, a preliminary statement was taken from Lieutenant Tello Delgado,¹⁵⁹ and on July 2, 1993, the testimonial statement of Porfirio Osorio Rivera.¹⁶⁰

87. On November 30, 1993, the Third Permanent Military Court of Lima issued a Final Report indicating that, with regard to Lieutenant Tello Delgado, no responsibility had been proved in relation to the offenses of abuse of authority or deprivation of liberty with regard to Jeremías Osorio Rivera, because he had acted in keeping with his functions in an emergency zone.¹⁶¹

88. On February 2, 1994, in a report of the Judge-Advocate of the Army’s Second Judicial Zone, additional measures were requested and the expansion of the time frame for the investigation.¹⁶² On February 7, 1994, the Permanent War Council expanded the investigation period by 30 days in order to take measures to get a better idea of what had happened.¹⁶³ Among the measures requested was the expansion of the preliminary statement of Lieutenant Tello Delgado, which took place on May 23, 1994; in it, he stated that Lieutenant Colonel Roncal Vargas was responsible for investigating Jeremías Osorio Rivera, since the latter was his commanding officer.¹⁶⁴ Consequently,

¹⁵⁴ Cf. Note No. 437 18ª DB/A-5/21.00 of June 13, 1991 (evidence file, volume X, annex 52 to the State’s answering brief, folio 4910).

¹⁵⁵ Cf. Opinion of the military Judge-Advocate of June 8, 1992 (evidence file, volume X, annex 53 to the State’s answering brief, folio 4912).

¹⁵⁶ Cf. Decision of the Permanent War Council of the Army’s Second Judicial Zone of June 11, 1992 (evidence file, volume X, annex 54 to the State’s answering brief, folio 4914).

¹⁵⁷ Cf. Order issued by the Third Permanent Military Court of October 5, 1992 (evidence file, volume X, annex 55 to the State’s answering brief, folio 4916).

¹⁵⁸ Cf. Decision issued by the Permanent War Council of the Army’s Second Judicial Zone on November 25, 1992 (evidence file, volume X, annex 56 to the State’s answering brief, folio 4918).

¹⁵⁹ Cf. Preliminary statement made by Juan Carlos César Tello Delgado on June 4, 1993 (evidence file, volume IV, annex 63 to the submission of the case, folios 1869 to 1871).

¹⁶⁰ Cf. Testimonial statement made by Porfirio Osorio Rivera on July 2, 1993 (evidence file, volume IV, annex 62 to the submission of the case, folios 1865 to 1867).

¹⁶¹ Cf. Final Report No. O19-93/3erJMPL-2deZJE issued by the Third Permanent Military Court on November 30, 1993 (evidence file, volume X, annex 57 to the State’s answering brief, folios 4920 and 4921).

¹⁶² Cf. Report No. 108-94 of the Judge-Advocate of February 2, 1994 (evidence file, volume X, annex 58 to the State’s answering brief, folio 4924).

¹⁶³ Cf. Decision of the Permanent War Council of February 7, 1994 (evidence file, volume X, annex 59 to the State’s answering brief, folio 4926).

¹⁶⁴ Cf. Expansion of the preliminary statement made by Juan Carlos César Tello Delgado before the Third Permanent Military Court on May 23, 1994 (evidence file, volume IV, annex 68 to the submission of the case, folios 1882 and 1883).

on May 23, 1994, the Third Permanent Military Court issued an official note requesting the appearance of the said Lieutenant Colonel to provide a statement.¹⁶⁵

89. On July 7, 1994, the Third Permanent Military Court of Lima issued its Expanded Final Report in which it ratified the previous Final Report as regards the absence of responsibility of Lieutenant Tello Delgado.¹⁶⁶ On January 18, 1995, a report of the Judge-Advocate indicated that the existence of the offenses investigated had not been proved and that the accused acted in keeping with his duties, hence the case should be dismissed.¹⁶⁷ On February 7, the Permanent War Council decided to dismiss the case.¹⁶⁸ The dismissal was forwarded to the Military Prosecutor who, in turn, ruled that neither the perpetration of the alleged offense nor the responsibility of the accused had been proved.¹⁶⁹ Finally, the proceedings were forwarded to the Supreme Council of Military Justice which confirmed the dismissal ruling and ordered the “definitive archiving” of the case on February 7, 1996.¹⁷⁰ On October 15, 1996, the “definitive archiving” was confirmed by the favorable opinion of the Judge-Advocate of the Permanent War Council of the Army’s Second Judicial Zone.¹⁷¹

E.3. The amnesty laws

90. On June 15, 1995, Law No. 26,479 was published granting a general amnesty to all military, police, civilian or any other type of personnel who had been denounced, or who were being investigated, accused, prosecuted or convicted of ordinary or military offenses in the ordinary or military jurisdiction for any acts derived or originating from the fight against terrorism and that may have been committed individually or in group between May 1980 and the date on which the law was promulgated. In addition, it established that the judicial cases being processed or tried must be archived definitively.¹⁷² On July 2 that year, Law No. 26,492, known as the “interpretive law,” was published stipulating that no jurisdictional review of the amnesty of any kind was admissible.¹⁷³ The Inter-American Court declared that the said amnesty laws were incompatible *ab initio* with the American Convention in its judgment in the *Case of Barrios Altos* of March 14, 2001,¹⁷⁴ and then interpreted this in the sense that it had general effects.¹⁷⁵ These laws were not applied in the proceeding before the military jurisdiction in the instant case.

¹⁶⁵ Cf. Note No. 834-94/3JMP-2da.ZJE of May 23, 1994 (evidence file, volume IV, annex 69 to the submission of the case, folio 1886).

¹⁶⁶ Cf. Expanded Final Report No. 042-94/3er JMPL-2daZJE issued by the Third Permanent Military Court of Lima on July 7, 1994 (evidence file, volume X, annex 60 to the State’s answering brief, folio 4928).

¹⁶⁷ Cf. Report of the Judge-Advocate No. 260-95 of January 18, 1995 (evidence file, volume X, annex 61 to the State’s answering brief, folios 4930 and 4931).

¹⁶⁸ Cf. Dismissal decision issued by the Permanent War Council of the Army’s Second Judicial Zone on February 7, 1995 (evidence file, volume X, annex 62 to the State’s answering brief, folio 4933).

¹⁶⁹ Cf. Note No. 119-95 issued by the Military Prosecutor on April 19, 1995 (evidence file, volume X, annex 63 to the State’s answering brief, folio 4935).

¹⁷⁰ Cf. Decision of the Supreme Council of Military Justice of February 7, 1996 (evidence file, volume X, annex 65 to the State’s answering brief, folio 4941).

¹⁷¹ Cf. Judge-Advocate of the Permanent War Council of the Army’s Second Judicial Zone. Report No. 8968-96/A of October 15, 1996 (evidence file, volume X, annex 66 to the State’s answering brief, folio 4943).

¹⁷² Cf. Law No. 26,479 promulgated on June 14, 1995, and published the following day (evidence file, volume IV, annex 83 to the submission of the case, folio 2063).

¹⁷³ Cf. Law No. 26,492 promulgated on June 28, 1995, and published on July 2 that year (file of proceedings before the Commission, volume I, folio 370).

¹⁷⁴ Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 44.

E.4. The criminal proceeding opened in the special jurisdiction

91. On June 14, 2004, Porfirio Osorio Rivera filed another criminal complaint before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves¹⁷⁶ of Lima, requesting the investigation of the perpetration of the offenses of abduction and enforced disappearance to the detriment of his brother.¹⁷⁷ On June 25, 2004, as helpful evidence, the Special Prosecutor requested the Supreme Council of Military Justice to provide the proceedings in file No. 859-92.¹⁷⁸ After ordering that certain measures be taken,¹⁷⁹ the Special Prosecutor took the decision to recuse himself from conducting the investigation because it fell within the competence of the Provincial Prosecutor where the events described in the complaint had taken place.¹⁸⁰

92. On October 26, 2005, the Provincial Prosecution Service for Civil and Criminal Matters brought criminal charges against Lieutenant Tello Delgado and those who might be found responsible for a crime against humanity by enforced disappearance, and against personal liberty by abduction to the detriment of Jeremías Osorio Rivera.¹⁸¹ The criminal investigation was opened on November 10, 2005, by the Court for Civil and Criminal Matters of Cajatambo ordering certain evidence to be gathered.¹⁸²

93. On December 15, 2006, the Fourth Supraprovincial Court expanded the investigation period for six months in order to take different measures, such as receiving statements and requesting information from the Ministry of Defense.¹⁸³ Following the investigation stage, on August 21, 2007, the Fourth Supraprovincial Court issued its Final Report, indicating the measures that had been taken and those that it was not possible to accomplish.¹⁸⁴

94. On October 30, 2007, the Second National Superior Criminal Prosecutor determined that there were grounds to proceed to an oral trial and charged Lieutenant Tello Delgado with the crime against humanity of enforced disappearance to the detriment of Jeremías Osorio Rivera,

¹⁷⁵ Cf. *Case of Barrios Altos v. Peru. Interpretation of the judgment on merits*. Judgment of September 3, 2001. Series C No. 83, second operative paragraph.

¹⁷⁶ Regarding the procedure that led to the creation of the special sub-system of justice, see Ombudsman's Office, Report No. 162, "*A diez años de verdad, justicia y reparación. Avances, retrocesos y desafíos de un proceso inconcluso*", p. 97 and ff. (evidence file, volume XII, annex 2 to the representatives' brief with final arguments, folios 5467 to 5740).

¹⁷⁷ Cf. Complaint filed by Porfirio Osorio Rivera before the Lima Special Prosecutor on June 14, 2004 (evidence file, volume X, annex 68 to the State's answering brief, folios 4947 to 4950).

¹⁷⁸ Cf. Order issued by the Lima Special Prosecutor on June 25, 2004 (evidence file, volume X, annex 69 to the State's answering brief, folio 4952).

¹⁷⁹ Cf. Orders issued by the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of Lima on July 22, September 20 and November 8, 2004 (evidence file, volume X, annexes 70, 71 and 72 to the State's answering brief, folios 4954, 4956, 4957 and 4959).

¹⁸⁰ Cf. Decision of the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves of Lima of June 8, 2005 (evidence file, volume X, annex 74 to the State's answering brief, folio 4963).

¹⁸¹ Cf. Criminal complaint No. 109-2008-MP-FMP-Cajatambo of October 26, 2005 (evidence file, volume X, annex 76 to the State's answering brief, folios 4967 and 4968).

¹⁸² Cf. Ruling issued by the Court for Civil and Criminal Matters of Cajatambo on November 10, 2005 (evidence file, volume X, annex 77 to the State's answering brief, folios 4970 and 4971).

¹⁸³ Cf. Decision issued by the Fourth Supraprovincial Court on December 15, 2006 (evidence file, volume X, annex 78 to the State's answering brief, folios 4973 to 4976).

¹⁸⁴ Cf. Final report issued by the Fourth Supraprovincial Court on August 21, 2007 (evidence file, volume X, annex 81 to the State's answering brief, folios 4988 to 4995).

considering that the offense of abduction was subsumed within this. He also requested that Lieutenant Tello Delgado be deprived of liberty for 20 years and ineligible to exercise certain civil rights for five years, and that civil reparation of 50,000 soles be established.¹⁸⁵ On April 29, 2008, the National Criminal Chamber declared that there were grounds to proceed to the oral trial which would commence on May 19, 2008.¹⁸⁶

95. The oral proceeding concluded on December 17, 2008, when the National Criminal Chamber handed down its judgment in which it decided to acquit Lieutenant Tello Delgado of the charges he was accused of, considering that "it has been proved that the accused detained the victim and took him away, and that the latter has not been located since that date, which has caused suffering to his family members and which has been affecting them for more than 17 years; but also, there are serious doubts regarding the responsibility of the accused in the said acts that he is charged with; a doubt that is favorable to him in application of the constitutional principle of *in dubio pro reo*."¹⁸⁷ The representative of the Public Prosecution Service filed an application to annul this judgment.¹⁸⁸

96. On June 24, 2010, the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic declared that the judgment of December 17, 2008, was null, considering that the evidence has not been properly assessed, and ordered that a new oral proceeding be held.¹⁸⁹

97. The new oral proceeding consisted of 42 sessions held between November 16, 2010, and November 4, 2011,¹⁹⁰ the date on which the judgment was read, which, once again, acquitted Lieutenant Tello Delgado because there was a "reasonable doubt regarding the supposed perpetration of the offense of enforced disappearance by the accused Tello Delgado as the person having command responsibility in this case."¹⁹¹ Following the reading of the judgment, the representative of the Public Prosecution Service and the civil party filed appeals for a declaration of nullity.¹⁹²

98. On November 21, 2011, the National Criminal Chamber granted the appeal for a declaration of nullity and ordered that the proceedings be forwarded to the Criminal Chamber of the Supreme

¹⁸⁵ Cf. Report No. 119-2007-2aFSPN-MP-FN of October 30, 2007 (evidence file, volume X, annex 82 to the State's answering brief, folios 4997 to 5004).

¹⁸⁶ Cf. Decision No. 240 issued by the National Criminal Chamber on April 29, 2008 (evidence file, volume X, annex 83 to the State's answering brief, folios 5006 to 5009).

¹⁸⁷ Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4750 and 4751).

¹⁸⁸ Cf. Record corresponding to the thirtieth session of the oral proceeding held before the National Criminal Chamber on December 17, 2008 (evidence file, volume X, annex 85 to the State's answering brief, folio 5019).

¹⁸⁹ Cf. Supreme final judgment delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on June 24, 2010 (evidence file, volume X, annex 89 to the State's answering brief, folios 5034 to 5038).

¹⁹⁰ Cf. Record corresponding to the first session of the oral proceeding held before the National Criminal Chamber on November 16, 2010 (evidence file, volume X, annex 91 to the State's answering brief, folios 5042 and 5043), and Record corresponding to the forty-second session of the oral proceeding held before the National Criminal Chamber on November 4, 2011 (evidence file, volume X, annex 92 to the State's answering brief, folios 5045 to 5047).

¹⁹¹ Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume IX, annex 12 to the State's answering brief, folios 4506 to 4582).

¹⁹² Cf. Record corresponding to the forty-second session of the oral proceeding held before the National Criminal Chamber on November 4, 2011 (evidence file, volume X, annex 92 to the State's answering brief, folio 5047) and Brief of the civil party of November 4, 2011 (evidence file, volume X, annex 93 to the State's answering brief, folio 5049).

Court of Justice of the Republic.¹⁹³ On June 15, 2012, the file was sent to the First Supreme Criminal Prosecutor.¹⁹⁴

99. On April 17, 2013, the first session of the case was held before the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic.¹⁹⁵ On that date, it decided not to decree an annulment in relation to the appeals for a declaration of nullity filed by the representative of the Public Prosecution Service and the civil party against the judgment of November 4, 2011. The supreme final judgment that was subsequently delivered established that the judgment acquitting Lieutenant Tello Delgado would not be annulled, considering that:

Although there is evidence that a crime was committed, such as: it is not credible that the accused did not know that the victim was considered a subversive element; the detention and release of Gudmer Zárate Osorio and another six individuals who had been detained, contrary to that of the victim; that the accused did not provide any names of the members of the patrol on the date of the events, individuals who detained the victim and who took him with the accused to Cajatambo, and that the great distance between Cajatambo and the home of the victim was not taken into account, so that the victim, instead of going home should have gone to the home of his sister, Silvia Osorio, who lived only a few meters from the center of Cajatambo; these facts on their own, do not prove with certainty that the accused ordered or executed actions that resulted in the disappearance of the victim; particularly, when there is evidence proving his version of the events; hence, we are confronted with a clear case of doubt based on the inculpatory and exculpatory evidence; in other words, a case of *in dubio pro reo*; hence the accused must be acquitted.¹⁹⁶

100. Following the drafting and signing of this decision, it was published on August 27, 2013;¹⁹⁷ thus the Inter-American Court was informed of the decision the day before the public hearing in the instant case was held before it.

VII MERITS

101. Having decided the preliminary objections (*supra* Chapter IV), the Court will now consider and decide the merits of the dispute. To this end, the Court will determine whether what happened to the presumed victim constituted the alleged enforced disappearance and, if appropriate, it will rule on the consequent international responsibility of the State. Then, it will examine the alleged violations of the rights to juridical personality,¹⁹⁸ life,¹⁹⁹ personal integrity²⁰⁰ and personal liberty²⁰¹

¹⁹³ Cf. Decisions issued by the National Criminal Chamber on November 31, 2011, and March 28, 2012 (evidence file, volume X, annexes 95 and 96 to the State's answering brief, folios 5061, 5062, 5064 and 5065).

¹⁹⁴ Cf. Note No. 65-2013-FSPNC-MP-FN of the Coordinator of the National Superior Criminal Prosecutors and Supraprovincial Prosecutors of January 16, 2013 (evidence file, volume X, annex 97 to the State's answering brief, folios 5067 to 5069).

¹⁹⁵ Cf. Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State's final arguments, folios 5419 to 5434).

¹⁹⁶ Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State's final arguments, folios 5419 to 5434).

¹⁹⁷ Cf. Note No. 172-2013-DDHH/PJ of July 12, 2013 (evidence file, volume XII, annexes to the brief with the State's final arguments, folios 5435 to 5437).

¹⁹⁸ Article 3 of the American Convention establishes that: "[e]very person has the right to recognition as a person before the law."

¹⁹⁹ Article 4(1) of the American Convention establishes that: "[e]very 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."

of Jeremías Osorio Rivera, in relation to the obligations to respect and ensure rights²⁰² established in the American Convention. Subsequently, the Court will analyze the alleged violations of judicial guarantees and judicial protection²⁰³ in the context of the domestic criminal proceedings held as a result of the facts of this case, as well as the obligation to adopt provisions of domestic law. Lastly, the Court will examine the alleged violation of the personal integrity of the family members. In addition, the Court will take a decision on the alleged violations of the Inter-American Convention on Forced Disappearance of Persons.

VII-1

RIGHTS TO PERSONAL LIBERTY, PERSONAL INTEGRITY, LIFE, AND JURIDICAL PERSONALITY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS AND TO THE OBLIGATIONS CONTAINED IN ARTICLE I OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, TO THE DETRIMENT OF JEREMÍAS OSORIO RIVERA

A. Determination of the existence of the alleged enforced disappearance

A.1. Arguments of the parties and of the Commission

102. The Commission established that it had been proved that Jeremías Osorio Rivera was detained by members of the Peruvian Army who belonged to the Cajatambo Counter-subversive Base on April 28, 1991, “and was held incommunicado in a military base in the community of Nunumia, Gorgor district, province of Cajatambo, department of Lima, until April 30, 1991.” It also stated that, on that date, the members of the presumed victim’s family and several villagers from Cochaspaca saw him for the last time. In addition, the soldiers responsible for the detention gave out false information about his whereabouts and, before that, had refused to provide information on the presumed victim’s situation. Consequently, the Commission considered that the foregoing elements were sufficient to conclude that what happened to Jeremías Osorio Rivera should be classified as an enforced disappearance, in the terms of Article II of the Inter-American Convention on Forced Disappearance of Persons.

103. In particular, the Commission indicated that the circumstances surrounding the arrest and transfer of Jeremías Osorio Rivera and the way in which information on his whereabouts was released were consistent with the *modus operandi* for enforced disappearances used by the security forces during the internal armed conflict in Peru. The Commission emphasized the relevance of taking into consideration the well-known context of gross human rights violations

²⁰⁰ The pertinent part of Article 5 of the American Convention stipulates that: “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.”

²⁰¹ Article 7(1) of the American Convention states that: “[e]very person has the right to personal liberty and security.”

²⁰² Article 1(1) of the American Convention establishes: “[t]he 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.”

²⁰³ Article 8(1) of the American Convention stipulates that: “[e]very 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.” While Article 25(1) of the American Convention establishes that: “[e]veryone 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.”

committed by members of the State's security forces during the counterinsurgency effort in Peru. In this regard, it considered that "an appropriate assessment of a context of human rights violations in a country at a specific historic moment cannot be based merely on the quantitative aspect, but must also include the qualitative aspect." This is why the *modus operandi* identified by the Truth Commission is of fundamental importance for the analysis of this case. The Commission recalled that this *modus operandi* included selectivity and "the use of [different forms] of concealment, including the preparation of records of release." In addition, it considered that the low numbers cited by the State were not "surprising," because the Truth Commission had indicated that, at the time of the disappearance of Jeremías Osorio Rivera there had been a decrease in the number of disappearances; however, at the same time, it had verified "the highest degree of selectivity and their systematic nature." Furthermore, the existence of a counterinsurgency operation in the area at that time; the fact that Jeremías Osorio Rivera was not brought before any authority to decide his situation even though he had allegedly been found *in flagrante* in possession of a weapon; the fact that there were police attestations identifying him as a possible subversive; that he was referred to as "comrade" in the Commander's report; the way in which he was transferred citing "manuals" for the treatment of "subversives"; the testimony of his wife and his sister indicating that when they went to ask for him they were given to understand that he was considered a subversive; taken as a whole, these are factors that would allow it to be inferred that the element of selectivity was present in the detention of Mr. Osorio Rivera.

104. The Commission identified two instances in which the element of concealment was verified: (1) when the members of Mr. Osorio Rivera's family went repeatedly to ask for information on his situation, on the reasons for the detention and, especially, for his release and the authorities did not allow them to have any access to specific information on his situation, his presentation before a competent authority, or his fate, and (2) the position assumed by the Peruvian State before the Inter-American Court by indicating that Mr. Osorio Rivera was released on May 1, 1991. Regarding this supposed release, the Commission emphasized that the State had not brought up this hypothesis as part of its defense during the proceedings before the Inter-American Commission. According to the Commission, the State had not denied the enforced disappearance, but had merely indicated that the investigations were underway. According to the Commission, in this case, the principle of estoppel was fully applicable to the position of the Peruvian State, which had assumed the accused's hypothesis before the Inter-American Court for the first time. In this regard, the Commission considered that this hypothesis should be kept outside the factual framework. The Commission also considered that the hypothesis that Mr. Osorio Rivera's arrest was made *in flagrante delicto* because he was carrying a weapon, or that it was a purely accidental, circumstantial or casual arrest, "not only is not substantiated in the case file, but is contrary to the available evidence and to the actions of the soldiers who detained Jeremías Osorio Rivera." Thus, according to the Inter-American Commission, the deprivation of liberty of Mr. Osorio Rivera constituted the first act initiating the victim's enforced disappearance. Regarding the supposed record of release, the Commission considered that this lacked any probative value based on a series of reasons that it described. In addition, the Commission observed that, regardless of the alleged release, the fact is that there has been no news of Mr. Osorio Rivera since April 30, 1991, when his brother saw him as he was being taken away. The Commission considered that, in light of the rules of sound judicial discretion, the absence of information for 22 years about the fate or whereabouts of Mr. Osorio Rivera since his supposed release raises serious doubts about the State's hypothesis.

105. The representatives argued that an enforced disappearance had occurred in this case based on: (1) the context at the time of the facts; (2) the circumstances and conditions of the victim's detention; (3) the irregularities in the supposed release, and (4) the failure to establish the whereabouts of Jeremías Osorio Rivera. Thus, after analyzing the general context of violence in the country during the year in which the events of this case took place, and based on the reports of the

Truth and Reconciliation Commission and of the Inter-American Commission, they considered that the Court should find that it had been proved that the alleged detention and subsequent disappearance of Jeremías Osorio Rivera had occurred in a context during which there was a systematic practice of enforced disappearances by State agents, and that the events occurred in a region where members of the Army were in control of the area, and their intervention was based on the prior planning of operations and interventions. In particular, the representatives argued that it had been proved sufficiently that the presumed victim had been detained by agents of the Peruvian State on April 28, 1991, and that, subsequently, false information was provided on his whereabouts, so that he has been disappeared since April 30 that year, without any knowledge of his whereabouts to date; thus, the State is internationally responsible for these facts.

106. The representatives referred to the systematic nature of enforced disappearance from 1989 to 1993, and also to its *modus operandi*. In this regard, they agreed with the facts presented by the Commission and added that the CVR had concluded that enforced disappearance had been “one of the main mechanisms of the counterinsurgency effort used by State agents, acquiring the characteristics of a systematic or generalized practice.” Regarding the inversion of the burden of proof, the representatives referred to the case of *Velásquez Rodríguez v. Honduras*, and argued that, if it was possible to demonstrate that a Government practice of disappearances existed, no additional evidence was needed in order to prove the disappearance in a specific case, even though the State may have denied, by means of a judgment, the systematic pattern of enforced disappearances in the province of Cajatambo.

107. Regarding the supposed release of Jeremías Osorio Rivera, the representatives argued that the document identified as a record of release was handwritten, without any stamp or distinctive marking that would corroborate that it was drawn up by the Cajatambo Counter-subversive Base, because it was not signed by any other soldier from this base. Moreover, no record of release was drawn up for Gudmer Tulio Zárate Osorio. In addition, the representatives rejected the graphology appraisal of the record and impugned the testimony concerning the release of Jeremías Osorio Rivera. The representatives referred to the reports of the Commission that referred to records of release that contained the forged signature of the victim or, at times, the real signature obtained by torture when, in fact, the release had never taken place.

108. The State affirmed that the presumptions of the Commission and the representatives did not attain the level of confidence required for the Court to attribute responsibility to the Peruvian State for the presumed enforced disappearance of Jeremías Osorio Rivera. The State indicated, by an analysis made in light of the CVR Report, that this case did not correspond to the *modus operandi* of enforced disappearance because Jeremías Osorio Rivera was not selected previously as a potential victim. In this regard, the State argued that, prior to his detention, there were no incidents that would lead to the presumption that he was being threatened, intimidated or harassed by State agents, nor was there evidence of that he had previously filed a public complaint because he believed that he was in danger. The State affirmed that his arrest was due to a circumstantial act, not because he was being monitored or had been identified as a presumed member of a terrorist group and, also, that his detention was not clandestine, but rather public. The State also argued that the time spent by Jeremías Osorio Rivera in the place that the Army patrol occupied in the community of Nunumia, the transfer to the Cajatambo Counter-subversive Base, his confinement there, and subsequent release on May 1, 1991, were not denied or hidden by military personnel. The State indicated that, contrary to the usual practice in cases of enforced disappearance, from the very start, the members of the Army, especially Lieutenant Tello Delgado, provided information to the family members and other individuals who inquired about Jeremías Osorio Rivera’s situation.

109. The State considered that the facts of the case were not in keeping with the supposed systematic or generalized assumptions of enforced disappearance that had been indicated, because at that time and in that area, few human rights violations were committed that could be attributed to State officials. In addition, the State observed that the supposed general scenario of violence in that area and at that time, which the Commission and the representatives sought to infer, by itself, would not allow the Court to attribute the State with international responsibility for the alleged enforced disappearance of Jeremías Osorio Rivera. Lastly, the State indicated that the Commission had erroneously considered that the enforced disappearance of Jeremías Osorio Rivera and the State's responsibility had been proved based on indications and presumptions, which may have been valid in other cases of enforced disappearance where there was a context of human rights violations, an absence of direct evidence, clandestine detentions, and concealment or denial of the facts by State officials, but this had not occurred in the instant case.

110. The State indicated that, both the existence of the record of release of May 1, 1991, regarding which the graphology experts verified that the signature had been handwritten by Jeremías Osorio Rivera and that the fingerprint could be one of his fingers, as well as the two radiograms and the statements, *a contrario sensu* to what the Commission had indicated, prove that, in this case, Jeremías Osorio Rivera was released on the morning of May 1, 1991. The State argued that, in this case, there is direct evidence of the release of Jeremías Osorio Rivera, so that it is not necessary to refer exclusively to presumptions and indications. Regarding the acquittals, the State added that, during the investigations conducted by the prosecutors and the judicial proceedings, these indications and presumptions had been discredited, and the facts were clarified, establishing that, although the detention and transfer of Jeremías Osorio Rivera had been proved, his enforced disappearance by the accused had not been substantiated.

A.2. Considerations of the Court

111. In this case, a dispute exists between the parties as to whether the presumed enforced disappearance of Mr. Osorio Rivera occurred and, if so, whether it can be attributed to the State. On the one hand, the Inter-American Commission and the representatives argue that the participation of State agents in the supposed enforced disappearance of Mr. Osorio Rivera has been proved and, on the other hand, the State's defense is based on the alleged existence of evidence establishing that the disappearance was not committed by State agents, so that it did not generate State responsibility. In view of the foregoing, the Court will now decide, first, whether what happened to Jeremías Osorio Rivera constitutes an enforced disappearance that can be attributed to the State. To this end, it will first establish the general framework based on which it will make its analysis, and then examine the disputed aspects relating to the elements that constitute enforced disappearance (*infra* paras. 117 to 159). It will then rule on the alleged violations of the obligations to respect and to ensure the human rights of Mr. Osorio Rivera (*infra* paras. 165 to 171).

112. The Court has verified the international agreement as regards the analysis of enforced disappearance, which constitutes a gross violation of human rights, given the particular significance of the violations that it entails and the nature of the rights harmed, so that it involves a blatant rejection of the essential principles that underlie the inter-American system,²⁰⁴ and its prohibition has achieved the status of *jus cogens*.²⁰⁵

²⁰⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 158, and *Case of García and family members v. Guatemala. Merits, reparations and costs. Judgment of November 29, 2012. Series C No. 258*, para. 96.

²⁰⁵ Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153*, para. 84, and *Case of García and family members v. Guatemala, supra*, para. 96.

113. In its case law, the Court has developed the permanent or continuing nature of enforced disappearance and the fact that it violates multiple norms. This characterization of enforced disappearance as permanent or continuing and as violating multiple norms is revealed not only by its definition in Article III of the Inter-American Convention on Forced Disappearance of Persons,²⁰⁶ to which the Peruvian State is a party (*supra* para. 14), the *travaux préparatoires* of this Convention,²⁰⁷ its preamble and its articles, but also by other definitions contained in different international instruments,²⁰⁸ which also indicate as concurrent and constituent elements of enforced disappearance: (a) the deprivation of liberty; (b) the direct intervention of State agents or their acquiescence, and (c) the refusal to acknowledge the detention and to reveal the fate or the whereabouts of the person concerned.²⁰⁹ This characterization is consistent with other definitions contained in different international instrument,²¹⁰ the case law of the European human rights system,²¹¹ decision of the Human Rights Committee of the International Covenant on Civil and Political Rights,²¹² and decisions of domestic high courts.²¹³

²⁰⁶ Article II of the Inter-American Convention on Forced Disappearance of Persons stipulates 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 guarantees." The pertinent part of Article III of this instrument indicates that: "[t]his offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined."

²⁰⁷ 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).

²⁰⁸ Cf. United Nations, Report of the Working Group on Enforced or Involuntary Disappearance, General comment on article 4 of the Declaration on the Protection of All Persons from Enforced Disappearance of 15 January 1996, E/CN.4/1996/38, para. 55, and article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.

²⁰⁹ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs, supra*, para. 97, and *Case of García and family members v. Guatemala, supra*, para. 97.

²¹⁰ Cf. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/RES/61/177 of 20 December 2006; paragraph 2, subparagraph (i) of Article 7 of the Statute of Rome of the International Criminal Court, U.N. Doc. A/CONF.183/9, of 17 July 1998, and Preamble to the Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, 18 December 1992.

²¹¹ In this regard, the following cases of enforced disappearance of persons can be consulted: ECHR, *Cyprus v. Turkey* [GC], no. 25781/94, 10 May 2001, paras. 132 to 134, 147 and 148, 2001-IV, and ECHR, *Varnava and Others. v. Turkey*, nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, paras. 111 to 113, 117, 118, 133, 138 and 145.

²¹² In this regard, see, *Messaouda Grioua and Mohamed Grioua v. Algeria*, CCPR/C/90/D/1327/2004 (2007), Communication No. 1327/2004, 16 August 2007; *Yasoda Sharma and Surya Prasad Sharma v. Nepal*, CCPR/C/94/D/1469/2006, Communication No. 1469/2006, 6 November 2008; *Zohra Madoui and Menouar Madoui v. Algeria*, CCPR/C/94/D/1495/2006 Communication No. 1495/2006, 1 December 2008, and *Nydia Erika Bautista de Arellana v. Colombia*, CCPR/C/55/D/563/1993, Communication No. 563/1993, 13 November 1995.

²¹³ Cf. *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, Judgment of August 10, 2007 (declaring the permanent nature and multiple offenses involved in the offense of enforced disappearance); Supreme Court of Justice of the Nation of Mexico, Judgment: P./J. 87/2004, "Enforced disappearance of persons. The time frame for calculating the statute of limitations only begins when the victim appears or his fate has been established" (affirming that enforced disappearance is a permanent offense and that the statute of limitations must be calculated from the time that it ceases to be committed); *Case of the indictment of Pinochet*, Plenary of the Supreme Court of Chile, Judgment of August 8, 2000; *Case of Sandoval*, Court of Appeal of Santiago de Chile, Judgment of January 5, 2004 (declaring that the offense of enforced disappearance is continuing, a crime against humanity, and is not subject to the statute of limitations or to amnesty); *Case of Videla et al.*, National Federal Criminal and Correctional Appeals Chamber of the Capital of Argentina, Judgment of September 9, 1999 (declaring that enforced disappearances are continuing offenses and crimes against humanity, and that they are not subject to the statute of limitations); *Case of José Carlos Trujillo*, Constitutional Court of Bolivia, Judgment of November 12, 2001 (declaring that the offense of enforced disappearance is a continuing offense and that the statute of limitations must be calculated from the time that it ceases), and *Case of Castillo*

114. Also, according to paragraphs (a) and (b) of Article I of the Inter-American Convention on Forced Disappearance of Persons, the States parties undertake not to practice, permit, or tolerate the enforced disappearance of persons, under any circumstances, and to punish those who commit this offense within their jurisdiction. This is consequent with the State's obligation to respect and ensure rights contained in Article 1(1) of the American Convention, which entails the obligation of the States Parties to organize all the structures through which the powers of the State are exercised so that they are able to ensure, legally, the free and full exercise of human rights.²¹⁴ As part of this obligation, the State has the legal obligation "[t]o prevent, within reason, human rights violations, and to investigate effectively any violations committed within its jurisdiction with the means available, in order to identify those responsible, impose the pertinent sanctions on them, and ensure adequate reparation to the victim."²¹⁵

115. It can be concluded from all the above that acts that constitute enforced disappearance have a continuing or permanent character and that their consequences result in multiple violations of the human rights recognized in the American Convention while the whereabouts of the victim are unknown or his remains have not been found. Consequently, States have the corresponding obligation to investigate enforced disappearances and, eventually, to punish those responsible pursuant to the obligations derived from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of Persons.

116. In this regard, the analysis of enforced disappearance must encompass the whole series of acts that have been presented to the Court's consideration in this case.²¹⁶ Only thus is the legal analysis of the enforced disappearance consequent with the complex violation of human rights that it involves,²¹⁷ with its continuing or permanent character, and with the need to consider the context in which the facts occurred, in order to analyze their effects prolonged over time and to consider their consequences integrally,²¹⁸ taking into account both the inter-American and the international *corpus juris* on protection.

117. The Court will now examine whether what happened to Mr. Osorio Rivera constitutes an enforced disappearance. To this end, it will assess the different probative elements in the case file in light of the aspects that are in dispute between the parties and the Commission in order to determine whether they comprise the elements that constitute enforced disappearance (*supra* para. 113). In this regard, the Court must assess the evidence taking into account the serious nature of the attribution of international responsibility to a State and that, despite this, is able to establish the certainty of the truth of the alleged facts.²¹⁹

Páez, Constitutional Court of Peru, Judgment of March 18, 2004 (declaring, based on the decisions of the Inter-American Court in this case, that enforced disappearance is a permanent offense until the whereabouts of the victim has been determined, and involves multiple offenses).

²¹⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 166, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 329.

²¹⁵ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 174, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 156.

²¹⁶ Cf. *Case of Heliodoro Portugal v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 186, para. 112, and *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 78.

²¹⁷ Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 112, and *Case of Gelman v. Uruguay*, *supra*, para. 78.

²¹⁸ Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 85, and *Case of Gelman v. Uruguay*, *supra*, para. 78.

²¹⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 129, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 132.

i. Deprivation of liberty whatever the form it takes

118. The State argued that Jeremías Osorio Rivera was deprived of his liberty because he was presumably *in flagrante delicto*, which is included in article 279 of the Peruvian Criminal Code in force at the time of the events and, also, a state of emergency was in place under which the right to personal liberty was suspended. This Court has indicated that when arguing that a detention has been carried out *in flagrante delicto*, the burden of proof falls on the State.²²⁰ In this regard, the State indicated that: (i) Jeremías Osorio Rivera was deprived of his liberty after an explosion had occurred in the peasant community of Nunumia; (ii) the Army patrol under Lieutenant Tello Delgado had conducted an investigation, identifying Jeremías Osorio Rivera and his cousin, Gudmer Tulio Zárate Osorio, as those presumably responsible for the explosion, and (iii) a firearm (revolver) and explosive devices had been confiscated from Jeremías Osorio Rivera.

119. Consequently, the Court will proceed to verify whether the detention of Mr. Osorio Rivera was carried out in accordance with Peruvian law. To this end, it is important to mention that Supreme Decree No. 016-DE/SG of April 2, 1991,²²¹ extended the state of emergency in effect in the department of Lima and the constitutional province of Callao for 60 days as of April 3, 1991. This Decree established the suspension of the guarantees established in paragraphs 7, 9, 10 and 20(g) of article 2 of the Peruvian Constitution in force at the time of the facts, specifically:

7. The inviolability of the home;

9. To choose freely the place of residence, to move around national territory, and to leave it and to enter it and not to be repatriated or separated from the place of residence unless this is by court order or the application of the aliens law;

10. To assemble peacefully, without weapons, and

20(g). Not to be detained, unless by written and reasoned order of a judge or by the police authorities *in flagrante delicto*. In any case, the detainee must be brought before the corresponding court, within twenty-four hours or in function of the distance. Cases of terrorism, spying and illegal drug-trafficking are excepted, when the police authorities may carry out preventive detention of those presumably involved for no more than fifteen natural days, but must inform the Public Prosecution Service and the judge, who may assume jurisdiction before the end of this period.

120. This Court has established that the suspension of guarantees constitutes an exceptional situation in which it is licit for the Government to apply certain restrictive measures on rights and freedoms that, under normal conditions, are prohibited or subject to more rigorous requirements. The Court notes that the Convention does not prohibit the suspension of the right to personal liberty under Article 7 of the Convention, temporarily and to the extent strictly necessary to deal with the exceptional situation. Nevertheless, this Court has already indicated that, "according to Article 27(2) of this instrument, the legal procedures established in Articles 25(1) and 7(6) of the American Convention [...] cannot be suspended, because they constitute essential judicial guarantees to protect rights and freedoms that cannot be suspended according to this same provision."²²² Similarly, international human rights bodies have expressed a similar opinion that, as in the case of the right of everyone deprived of liberty to have recourse to a competent judge or

²²⁰ Cf., *mutatis mutandi*, *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, paras. 50 and 51, and *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 44.

²²¹ Cf. Supreme Decree No. 016-DE/SG of April 2, 1991 (evidence file, volume IX, annex 16 to the State's answering brief, folio 4649).

²²² *Habeas Corpus in Emergency Situations (Arts. 27.2, 25, and 7.6 American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 24. See also *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, and *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, paras. 82 to 84.

court to decide the legality of his detention or *habeas corpus*, the prohibition of the arbitrary deprivation of liberty is a non-derogable right that cannot be suspended.²²³ In addition, the International Committee of the Red Cross has established that the prohibition of arbitrary deprivation of liberty is a rule of customary international humanitarian law, applicable to both international and non-international armed conflicts.²²⁴ Consequently, pursuant to “the obligations that [...] are imposed by international law,”²²⁵ the prohibition of arbitrary detention or imprisonment cannot be suspended during an internal armed conflict.

121. In this case, the state of emergency in force in the province of Cajatambo, department of Lima, suspended the right not to be detained without a court order and the right to be brought before a judge. In addition, in the case of *in flagrante delicto*,²²⁶ according to the Constitution, only “the police authorities” were empowered to detain a person, provided that the detainee was brought before the court as established. However, under the state of emergency, the military forces were authorized “to exercise control of internal order” in the respective department and province.²²⁷

122. In this regard, it is pertinent to recall that the possibility of granting the Armed Forces functions aimed at restricting the personal liberty of civilians should respond to strict criteria of exceptionality and due diligence in order to safeguard the treaty-based guarantees, taking into account that the regime of the military forces is not in accordance with the functions intrinsic to civil authorities.²²⁸ Consequently, in some contexts and circumstances, the intervention of the Armed Forces in activities relating to public safety may entail the introduction of a risk to human rights. In this regard, the CVR asserted that “the intervention of the Armed Forces was carried out without the civil authorities taking the basic precautions to safeguard the fundamental rights of the population, which resulted in numerous systematic and/or generalized human rights violations.”²²⁹ Thus, it established that, “[i]n view of the fact that the Army was responsible for internal order in most of the places declared emergency zones, it is not surprising that the members of this institution were the authors of such a large proportion of enforced disappearances.”²³⁰

123. In the instant case, the evidence indicates that, on the night in question, there was an explosion and/or shots fired in the community hall of Nunumia where an event was being held, and it is plausible to consider that, in these circumstances, the Army patrol responsible for internal

²²³ Cf. Human Rights Committee, *General Comment No. 29: States of Emergency*, CCPR/C/21/Rev.1/Add.11, 31 August 2001, paras. 11 and 16, and Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24 December 2012, paras. 42 to 51.

²²⁴ Cf. International Committee of the Red Cross, *Customary International Humanitarian Law*, vol. I, edited by Jean-Marie Henckaerts and Louise Doswald-Beck, 2007, Rule 99.

²²⁵ Article 27(1) of the American Convention on Human Rights.

²²⁶ Article 259 of the Peruvian Code of Criminal Procedure refers to *in flagrante delicto* as follows:

2. *In flagrante delicto* exists when the wrongful act is being committed and, in that circumstance, the author is discovered, or when the author is followed and captured immediately after having committed the wrongful act, or when he is surprised with objects or signs revealing that he has just committed it.

²²⁷ Cf. Article 3 of Supreme Decree No. 016-DE/SG of April 2, 1991 (evidence file, volume IX, annex 16 to the State's answering brief, folio 4649).

²²⁸ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 89.

²²⁹ Truth and Reconciliation Commission, *Informe Final*, 2003, General conclusions, para. 84 (evidence file, volume III, annex 12 to the submission of the case, folio 1588).

²³⁰ Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, p. 82 (evidence file, volume III, annex 13 to the submission of the case, folio 1527).

order executed two preventive detentions. In other words, it is possible to infer that Mr. Osorio River and his cousin were arrested owing to the explosion or the shots that occurred. In this specific case, in principle, Lieutenant Tello Delgado was acting in keeping with the mandate under the domestic norms in relation to the state of emergency, because, for security reasons, members of the Army were allowed to make arrests in cases of *flagrante delicto*, such as the possession of weapons and explosives. However, the Court finds it worth noting that no record was drawn up of the alleged confiscation of a firearm (*supra* para. 68), which would have constituted the material evidence of the offense, and this casts doubt on whether such a procedure was carried out. Then, both detainees were taken to the place in Nunumia where the Army patrol had its base and deprived of liberty because they were unable to leave of their own free will and were not allowed to speak to their family members. Mr. Osorio River remained there from the early morning hours of April 29 until the morning of April 30, 1991.

124. Now, having clarified the facts, those arrested should have been released – as occurred in the case of Gudmer Tulio Zárate Osorio on April 30, 1991 – or they should have been brought before the competent authority to take the appropriate decision with regard to their detention. In this regard, the Court considers insufficient to satisfy the guarantee of submitting a person's detention to review that a radiogram was sent to the Commander General to report the detention, without bringing him before the corresponding authorities; particularly when, as indicated, there was a Police station in Gorgor district and an office of the Prosecution Service a few meters from the Cajatambo Counter-subversive Base.²³¹

125. In this regard, the Court recalls that, when analyzing a presumption of enforced disappearance, it should be borne in mind that the deprivation of liberty should only be understood as the start of the constitution of a complex violation that is prolonged over time until the victim's fate and the whereabouts are known. In this regard, it is important to stress that, the way in which the deprivation of liberty is carried out is unimportant for the purposes of the characterization of an enforced disappearance;²³² in other words, any form of deprivation of liberty meets this first requirement. On this point, the Working Group on Enforced or Involuntary Disappearances has clarified that “the enforced disappearance may be initiated by an illegal detention or by an initially legal arrest or detention. That is to say, the protection of a victim from enforced disappearance must be effective upon the act of deprivation of liberty, whatever form such deprivation of liberty takes, and not be limited to cases of illegitimate deprivations of liberty.”²³³

²³¹ Cf. Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4728 and 4734).

²³² The 1992 Declaration on the Protection of All Persons from Enforced Disappearances establishes that enforced disappearances occur when persons are: “arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” In addition, article 2 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance defines enforced disappearance as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” Meanwhile, Article II of the Inter-American Convention on Forced Disappearance of Persons defines enforced disappearance as: “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.”

²³³ Working Group on Enforced or Involuntary Disappearances, Report of the Working Group on Enforced or Involuntary Disappearances, *General comment on the definition of enforced disappearances*, A/HRC/7/2, 10 January 2008,

126. In sum, the Court concludes, for the purposes of characterizing the enforced disappearance, that State agents executed a deprivation of liberty which constituted the commencement of the disappearance.

ii. The direct intervention of State agents or their acquiescence

127. There is no dispute about the fact that the detention was carried out by State agents and that Mr. Osorio Rivera remained deprived of liberty and in State custody at least until April 30, 1991. However, the State argues that there is evidence that the disappearance was not perpetrated by State agents, so that State responsibility was not involved. It based itself on three key considerations to reach this conclusion: (1) it questioned the application to this case of the context, systematic pattern and *modus operandi* by affirming that few human rights violations that could be attributed to State agents were being committed in the province of Cajatambo at the time of the events; (2) it affirmed that Mr. Osorio Rivera had been released on May 1, 1991, and (3) it referred to two acquittals decided in the criminal proceedings against the presumed author. The Court will now examine each of these arguments, first examining the "direct evidence" advanced by the State in order to disprove its international responsibility, and then analyzing the application to this case of the context, systematic pattern and *modus operandi* of enforced disappearances perpetrated by State agents.

ii.1) The alleged release of Mr. Osorio Rivera

128. Regarding the change in the State's position alleged by the Commission in relation to the record of release (*supra* para. 104), the Court has been able to verify that the file before the Commission contains the State's response of July 16, 1999, to the request for information concerning the case. At that time, the State advised the Commission, "based on information provided by the Ministry of Defense, that the citizen Jeremías Osorio Rivera was detained on April 28, 1991, and released on May 1, 1991, according to the record of release (copy attached); accordingly, it is not appropriate for the Peruvian State to submit to the friendly settlement procedure, since the security forces had no responsibility in the events denounced, as indicated by the Supreme Council of Military Justice."²³⁴ In addition, when submitting the case to the Court, the Commission forwarded the said "record of release" as an annex, and it is included among the facts described in the Merits report. Consequently, the Court does not find this argument by the Commission admissible.

129. Nevertheless, the State does not deny the detention of Jeremías Osorio Rivera or his transfer to the Cajatambo Counter-subversive Base by State agents; however, it affirms that he was released on May 1, 1991. The State based the supposed release, first, on radiograms that contain, on the one hand, the order that he be released and, on the other, confirmation that this had been done.²³⁵

para. 26 (7). See also, *Case of Blanco Romero et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 28, 2005. Series C No. 138, para. 105.

²³⁴ Pertinent parts of the observations of the State of Peru of July 16, 1999 (file of proceedings before the Commission, volume I, folio 150).

²³⁵ Radiograms 640 and 641 of May 1, 1991, refer to the order to release Jeremías Osorio Rivera. Radiogram 640 was issued on May 1, 1991, sent from "León" (zone Commander) to "Alfa" (Juan Carlos César Tello Delgado), transmitting the following order: "Your are hereby required to release DS Jeremías Osorio Rivera on day (K) advising this CMD (STOP)." Copy of radiogram No. 640 of May 1, 1991 (evidence file, volume IX, annex 26 to the State's answering brief, folio 4807). Arnulfo Roncal Vargas, Political and Military Chief of security area No. 1, stated that "[...] information was received of the detention of Jeremías Osorio Rivera early on April 29, 1991, by a radiogram, and his immediate release was ordered,

130. In addition, the body of evidence includes a document identified as “record of release,”²³⁶ which states the following:

Record of release. This document certifies that Osorio Rivera, Jeremías; bearer of LE No. 15200671, born in the province of Cajatambo, department of Lima, was released on May 1, 1991, at 7 a.m. without any type of physical or mental ill-treatment. This record is issued for the corresponding purposes.

Cajatambo, May 1, 1991

131. This document, handwritten and without any type of official letterhead, contains a signature over the name “Jeremías Osorio Rivera,” together with a fingerprint. During the domestic criminal proceeding, a graphology expertise was performed on this document, which concluded that “the signature appears to have been written by [Jeremías Osorio Rivera] because its characteristics are consistent with those of the signature that appears on the electoral roll [and w]ith regard to the dactylographic analysis, the fingerprint in question does not correspond to the right index finger, but could correspond to another finger.”²³⁷ The Transitory Criminal Chamber of the Supreme Court of Justice issued a ruling with regard to the graphology expertise, and established that “[...] when this was examined by the experts during the oral adversarial proceedings, they indicated that, in order to make a comparison, they only had the entry in the electoral roll forwarded from Cajatambo [...] as described in the section on comparison samples of the expertise described above; in other words, contradicting what they themselves [the experts] had indicated during the oral proceeding in which they stated that, in order to perform the appraisal they needed recent signatures, understood to be from two years ago at the most [...]. That, in this regard, this is not an appropriate document for performing a task of comparison of signatures and fingerprints, as [the experts] did, because the time that has passed could have affected the exactitude of the said samples, which would not allow a valid conclusion to be reached; this circumstance allows us to have valid doubts about the veracity of this scientific evidence; especially since the said experts in the oral proceeding also indicated that, in their report, they do not state that this is a signature that proves that the accused released the victim, which disproves his exculpatory version in this regard [...]”²³⁸ In its judgment of November 4, 2011, the National Criminal Chamber also mentioned that: “[...] we have the evidence of the record of release, and although the supreme final judgment of June 24, 2010, established that the graphology expertise [...], which indicated that the signature that appears on it is the handwriting of the individual referred to in this instrument, was not compared with an appropriate document for performing the task of comparing

because, one year previously, an effort had been undertaken to attract the civilian population and to implement a policy of pacification throughout the zone, and since there was no incriminating evidence, the immediate release of Jeremías Osorio Rivera was ordered. On receiving the radiogram, the accused [Juan Carlos Tello Delgado] took the detainee to the Cajatambo Base, because he was ending the operation and in order to conduct a basic interrogation; he recorded the radiogram he had initially received, and released [Jeremías Osorio Rivera] early on May 1 [...]” Testimonial statement made by Arnulfo Roncal Vargas before the National Criminal Chamber, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4719). Meanwhile, radiogram 641 of May 1, 1991, sent in response to the order, reads: “[...] BCS ‘Cajatambo’ released DS Jeremías Osorio Rivera (C) ‘Gashpao’ today 0700 (K) Head BCS made him sign record of release (STOP).” Copy of radiogram No. 641 of May 1, 1991 (evidence file, volume IX, annex 26 to the State’s answering brief, folio 4807). In this regard, Juan Carlos César Tello Delgado declared that communications with the command post were carried out by radio, on a daily basis, and that Jeremías Osorio Rivera was released immediately once he had received the order from Arnulfo Roncal Vargas. Cf. Preliminary statement made by Juan Carlos César Tello Delgado before the Fourth Supraprovincial Court on May 8, 2007 (evidence file, volume IX, annex 22 to the State’s answering brief, folio 4777).

²³⁶ Record of release of May 1, 1991 (evidence file, volume IV, annex 34 to the submission of the case, folio 1795).

²³⁷ Criminalistics Directorate of the Peruvian National Police, Central Laboratory Subdirector, Graphology Report No. 2110/91 of December 16, 1991 (evidence file, volume X, annex 42 to the State’s answering brief, folios 4883 to 4885).

²³⁸ Supreme final judgment delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on June 24, 2010, third and fourth considering paragraphs (evidence file, volume IV, annex 35 to the submission of the case, folios 1799 and 1800).

signatures and fingerprints; nevertheless, it has not been proved that this instrument is false, and it was not contested or opposed by the procedural parties. However, of itself, it does not result in certainty that the accused (*sic*) had in fact been released [...]; particularly when, during the oral proceeding, it was not possible to perform another expertise in this regard, given that the only means of comparison would be the same registration on the Cajatambo electoral roll that was used in the aforementioned expertise, which, therefore, would not comply with the requirement that the signatures to be compared should be contemporaneous, if it is considered that the victim was an individual from a rural area so that, in his work, he would rarely sign documents that could be used as contemporaneous with the signature that appears on the above-mentioned record."²³⁹

132. The State substantiated its position also by the testimony of two witnesses who stated that they had seen a person, who was Jeremías Osorio Rivera, leave the Cajatambo Counter-subversive Base on May 1, 1991, at approximately 7 a.m.: Simeón Retuerto Roque²⁴⁰ and Carlos Alberto Martínez García.²⁴¹

²³⁹ Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume IX, annex 12 to the State's answering brief, folios 4575 and 4576).

²⁴⁰ He stated the following: "I live[d] in Astobamba; at 6 a.m. I went to Cajatambo to wait for the authorities because we had agreed to meet that day and fix a date for the work; I was near the Base where they were installed at that time, and Jeremías Osorio Rivera came out of the Base; [I recognized him] by his physical appearance, his way of walking; [he was wearing] jeans and a black jacket, without a hat; he went towards the park and after that I don't know what happened, whether or not he returned; [I had known Jeremías Osorio Rivera] for many years when we were young [...]; I knew [Silvia Osorio Rivera, Jeremías Osorio Rivera's sister]." Statement made by Simeón Retuerto Roque before the National Criminal Chamber during the tenth session of the oral proceeding held on February 4, 2011 (evidence file, volume IX, annex 31 to the State's answering brief, folios 4854 to 4856). In his first statement, the same witness indicated that he had "known Jeremías Osorio Rivera approximately 28 to 30 years, because he was from Cochas Paca, a place he used to go to often to buy potatoes, and he recognized him because of his thin, lean appearance; they were not friends, and he does not know the members of his family; he cannot recall his face now, does not know where he lived, what kind of work he did, whether he had a family. [...] At approximately 7 a.m., from around 10 meters distance, he saw the victim leave the Base and go towards the park; he was healthy, hatless; he did not remember what he was wearing, but describes him as approximately 1.70 meters, brown-skinned, thin, around 28 to 30 years old." Testimonial statement made by Simeón Retuerto Roque on October 6, 2008, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4734). During the public hearing, he stated: "I knew Jeremías Osorio when I was young and he lived in Cochas Paca with his mother [...]. I needed to go to the mayor's office and we had an appointment that day in order to discuss the construction of a canal [...] to which all the authorities were invited, on May 1, 1991; and, as I live far away, I got up very early, and went at 6 a.m., because it took around one hour to reach the provincial capital, and to get to the municipal offices; it was then, when I was approaching what they call the Counter-subversive Base, near the municipal offices, and from there I could see Osorio coming [...] I knew him by his appearance, like all those from the highlands, they are thin and brown-skinned and that is why I knew him and he was close – let's say 10 meters away – of course, as he was, how shall I describe him, a friend – a distant acquaintance – I didn't even acknowledge him. I was just going to the municipal offices; but I did see him leave, that he was going towards the lower part of the town; that is what I know, and I know he was wearing a black jacket and jeans, blue socks and hatless [...]. I saw him leave and that he was going towards the lower part of town where there is a park there, but I was not interested; I just got to the municipal offices to open the door, the door of the meeting room, because on that day we had been invited to a meeting, because it was May 1, Labor Day, in order to do some work in the delegation. [...] I didn't know that he had disappeared. If I had been asked, I would have said, could have said, but as no one had said anything, there was no rumor among the people and that is why I knew nothing. I only found out recently when Lieutenant Conan came in 2008." Statement made by Simeón Retuerto Roque during the public hearing held before the Inter-American Court on August 29, 2013.

²⁴¹ During the domestic proceeding he stated that: "[...] he had stayed there talking until the radio operator called up the sergeant on guard duty for the detainee to be released; accordingly at 7 or 7.05 a.m., he saw the victim leave the procurement area; he was approximately 30 years old, he was not limping, he could not describe the color of his clothes, with the sergeant on guard who accompanied him to the door; afterwards he did not see him or where he might have gone [...]." Testimony given by Carlos [Alberto] García Martínez during the twentieth session of the oral proceeding held on October 6, 2008, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4736). In his second statement, Mr. Martínez García declared that, around 7 or 7.05 a.m. he saw a person appear who had been lodged in the procurement department, he was accompanied to the door by the sergeant on guard; he noted that he had not been ill-treated, that he was "normal." He concluded his testimony indicating that "he was at the door, talking to the sergeant on guard duty, then the soldier who was operating the radio called the sergeant; he was standing by the wall for around 15 minutes and from there he saw that the

133. The Commission and the representatives affirmed that the release never took place; first, based on statements of members of Jeremías Osorio Rivera's family. Porfirio Osorio Rivera stated that "on May 2, he went to the military base and talked to the Lieutenant who told him that his brother was free, showing him a handwritten document; he went to his mother's house, but his brother had not arrived; he asked around among the members of the community but no one knew anything."²⁴² In a second statement, Porfirio Osorio Rivera indicated, "[...] believing that my brother was free, I went to my brother's farm, but I did not find him; his wife and children were there, but I did not find him; and lastly I went to the community hall, but with the same result."²⁴³ Finally, in his most recent statement, during the public hearing, Porfirio Osorio Rivera stated that, "at around 8 a.m., on May 2, we returned to the Military Base; [...] the Lieutenant approached, so I said to the Lieutenant, 'I have come to ask for my brother,' 'tell your brother that I have already released him.' 'But if he has been released, he should have gone to my brother's house, but he has not arrived"; then, he said 'soldier, hand me the radiogram.' The soldier brought him a written document, but I couldn't read anything; he pointed to it and showed it to me saying: 'based on this order, I released your brother.' Then my sister, Silvia says to me, 'maybe, because my brother is dirty, injured, because he is ashamed he has gone up to our mother's house'; so we went to my brother's house and I saddled up a horse and went to ask for him at my mother's house; his wife was there, but my brother had not arrived. I went to the community hall, to Nunumia, where the members of the community were, but no one had seen my brother there either."²⁴⁴ The other members of Jeremías Osorio Rivera's family testified similarly denying that he had been released.²⁴⁵

134. Apart from the statements, the ruling of the Transitory Criminal Chamber of the Supreme Court of Justice of June 24, 2010, established that "[...] there are no reasons or grounds for [Jeremías Osorio Rivera] to have disappeared voluntarily after he supposedly recovered his freedom; in this regard the exculpatory version of the accused is totally implausible, particularly if

sergeant entered the place where the man was and he saw that the man came out walking, but he did not pay much attention because he did not know why that person was there." Statement made by Carlos Alberto Martínez García before the National Criminal Chamber during the twelfth session of the oral proceeding held on March 4, 2011 (evidence file, volume IX, annex 31 to the State's answering brief, folios 4823 and 4824).

²⁴² Preliminary statement made by Porfirio Osorio Rivera referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4706 and 4707).

²⁴³ Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folio 1784).

²⁴⁴ Statement made by Porfirio Osorio Rivera during the public hearing held before the Court on August 29, 2013.

²⁴⁵ Santa Fe Gaitán Calderón stated "[...] they told Porfirio that they had released my permanent companion, Jeremías Osorio, but he never came home. What freedom did they give him? Because he would have gone to his children; to the home of his sister, Silvia, who lived in Cajatambo." Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5304). The presumed victim's sister stated: "[...] the following day, May 2, we returned again in the morning with Porfirio and the same "Conan" came out and told us that he had released Jeremías. I was surprised by this information; we believed that they had released him, but we thought it strange that he had not gone home; we thought that perhaps because he was afraid or ashamed he had gone straight back to his home in Cochabamba. I went to my house; I asked my husband, but Jeremías had not arrived; then Porfirio went off on horseback to see if Jeremías had arrived back at his house. And later, when Porfirio arrived at the house of Jeremías, he was not there, so Porfirio returned to Cajatambo again on May 3, saying that Jeremías was not there. [...] Jeremías is not capable of doing that; he would always have returned home; he loved his family, my mother, he was very close to my mother. [...] I was so close to him that I find it impossible to think that, if Jeremías had been released he would not have gone to my house to change, to wash up, to eat, to ask for a horse or simply to see us, because his home was far away." Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folios 5310 and 5311). Lastly, Jeremías Osorio Rivera's daughter stated that: "[...] if they had released him, he would have gone to the house of my aunt Silvia, who lived in Cajatambo." Affidavit prepared by Edith Laritza Osorio Gaytán on August 14, 2013 (evidence file, volume XI, affidavits, folio 5316).

sufficient evidence exists that connects the accused to the offense that is being tried; although the events happened at a time when there was a permanent state of emergency throughout almost all the country owing to the counterinsurgency effort, it is also true that this circumstance would not exempt the accused from executing his functions as established in the norms and directives in force at the time, which indicated that, upon capturing terrorists, they had to be brought before the civil authorities, an instruction that the accused failed to comply with."²⁴⁶

135. Based on the arguments presented, this Court will proceed to reach its own decision on the supposed release of Jeremías Osorio Rivera and, to this end, it will analyze the following: (a) the probative value of the "record of release"; (b) the credibility of the testimony of the persons who witnessed the supposed release of Jeremías Osorio Rivera, and (c) the statements of the family members concerning the steps they presume Jeremías Osorio Rivera could have taken.

136. First, this Court observes that the "record of release" is handwritten, and has no stamp or other identifying mark that would allow it to be established where it was prepared; and it does not bear the signature or name of any of the members of the patrol. The graphology appraisal concluded that the signature was that of Jeremías Osorio Rivera and probably the imprint of one of his fingers, but not the right index finger. However, during the proceeding, contradictory versions can be found about the "scientific certainty" of the expert appraisal. Furthermore, no conclusive decision exists as to how the signature was obtained; that is, whether it was provided freely or under coercion. Consequently, there is no evidence that would allow this Court to rule on the possible falsification of the signature on the "record of release" or to state that the said document is a forgery.

137. Nevertheless, the Court considers it appropriate to note that, in both Peru and other countries where enforced disappearances have taken place, there is information that the authorities advise that they have released the person who is alleged to be disappeared as a practice to hide the true fate or whereabouts of the detainee. Thus, in several cases concerning detentions-disappearances that occurred in Peru between 1989 and 1991, the Inter-American Commission has described a variant of the enforced disappearances that consisted in issuing records of release with the signature falsified or obtained by torture, without the victim having been released.²⁴⁷ In addition, it is pertinent to emphasize that the Peruvian CVR has referred to the method of disappeared-appeared consisting in releasing detainees who the family members believed had disappeared and then, after signature of the release record, even attested by a lawyer, they were once again detained and disappeared definitively. The Vicariate Committee has documented approximately 70 cases of this type that occurred in the region of Ucayali, Pucallpa.²⁴⁸ Moreover, the European Court of Human Rights²⁴⁹ and the United Nations Working Group on Enforced or Involuntary Disappearances²⁵⁰ have verified similar practices in other countries.

²⁴⁶ Supreme final judgment delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on June 24, 2010, fourth considering paragraph (evidence file, volume IV, annex 35 to the submission of the case, folio 1800).

²⁴⁷ IACHR, Merits Reports Nos. 51/99, 52/99, 53/99, 54/99, 55/99, 56/99, 57/99, 43/00, 44/00, 45/00, 46/00 and 47/00.

²⁴⁸ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume III, Chapter 3.3, p. 293; Available at <http://cverdad.org.pe/ifinal/>.

²⁴⁹ In the Case of *Turluyeva v. Russia* it was established that, even though some authorities alleged that the victim was released, the reality is that his family never saw him or had news of him again. Cf. ECHR, Case of *Turluyeva v. Russia*, no. 63638/09, 20 June 2013, para. 82.

²⁵⁰ The Working Group on Enforced or Involuntary Disappearances has been informed of various cases in which the families have been advised that the person detained has been released, without anything further being known about them.

138. Consequently, of itself, the document does not provide sufficient evidence that Jeremías Osorio Rivera was released, because, as noted, the elaboration of documents that seek to certify a release is common in different countries and, specifically, in Peru. Thus, the Court will now rule on the other probative elements related to the supposed release in order to establish the truth or the falsity of what was stated in the said document, called a “record of release.”

139. Regarding the testimony of the persons who allegedly witnessed the departure of an individual from the Cajatambo Counter-subversive Base on May 1, 1991, this Court considers that evidence exists that raises doubts about the credibility of the accounts. Indeed, the statements were given 17 years after the events, during the proceeding opened in 2004, and at the request of the Lieutenant who was accused, and who had found the witnesses when he returned to Cajatambo; thus this is evidence that was not available during the previous proceedings. In addition, there are evident contradictions in the statements given by Simeón Retuerto Roque as regards the identification of the person who he saw leaving the Cajatambo Counter-subversive Base, because, in his first statement, he denies knowing anything about Jeremías Osorio Rivera and does not recall how he was dressed when he left the said Base, and then, in his second statement, he maintains that Jeremías Osorio Rivera was just an acquaintance, but describes his clothes and provides other information that he had not mentioned previously. Although the contradictions are not serious, they raise doubts about the truth of whether it really was Jeremías Osorio Rivera who walked out of the Cajatambo Counter-subversive Base. Meanwhile, Mr. Martínez García stated that he did not know Jeremías Osorio Rivera and nor did he identify the person who he saw leaving the Base on the date indicated. Consequently, although it is possible that a man of around 30 years of age left by the door of the Cajatambo Counter-subversive Base at approximately 7 a.m. on May 1, 1991, since two testimonies affirm this, the evidence is not conclusive to assert that it was, in fact, Jeremías Osorio Rivera.

140. In addition, this Court shares the opinion that it would be improbable that Jeremías Osorio Rivera disappeared voluntarily once he had recovered his freedom or that he would not have returned home or gone to the home of his sister Silvia who lived near the Counter-subversive Base (*supra* para. 133). This conclusion is supported by the fact that the Ombudsman’s Office, during the verifications made in 2006 to grant the certification of absence due to enforced disappearance, requested information from the National Identification and Civil Status Registry Office (RENIEC), the National Electoral Processes Office (ONPE), the National Penitentiary Institute (INPE), and the General Directorate of Immigration and Naturalization (DIGEMIN), and also sent official requests to the National Police, “without obtaining any evidence of the reappearance of Jeremías Osorio Rivera.”²⁵¹

141. Based on the above, this Court concludes that there is insufficient evidence of different kinds to support the State’s version that Jeremías Osorio Rivera was released from the Cajatambo Counter-subversive Base on May 1, 1991, and the last information on him is that he was in the State’s custody. Thus, the evidence cited is insufficient to substantiate the explanation provided by the State, and is therefore inadequate to disprove the State’s participation in the facts that are the grounds for this case.

ii.2) The acquittals delivered in the criminal proceedings

Cf. Reports of the Working Group on Enforced or Involuntary Disappearances, A/HRC/16/48, 26 January 2011, para. 468; A/HRC/13/31, 21 December 2009, para. 268; E/CN.4/2001/68, 18 December 2000, para. 62.

²⁵¹ Ombudsman’s Office, Verification report No. 5442-2006-OD/LIMA of September 13, 2006 (evidence file, volume IV, annex 19 to the submission of the case, folio 1667).

142. In 2011, the accused was acquitted of the offense contained in article 320 of the Criminal Code, after it was considered that, “although [the evidence] does not create certainty that the victim was released, the fact is that there is a reasonable doubt in this regard, and this does not allow it to be inferred with certainty that the accused is criminally responsible for the enforced disappearance of the victim.”²⁵² The decision of April 17, 2013, which declared that the 2011 judgment was valid, indicated that “[the] evidence proves that the victim was, indeed, taken to the Cajatambo base, because he had been detained; however, it does not prove with certainty that he was disappeared by order of the accused.”²⁵³ It then stated that the evidence “does not prove with certainty that the accused ordered or executed actions that resulted in the victim’s disappearance.” The decision concluded that “this is a clear case of doubt based on the exculpatory and inculpatory evidence; in other words, a case of *in dubio pro reo*; hence the accused must be acquitted.”²⁵⁴

143. On this point, it is important to recall that the international human rights jurisdiction should not be confused with the criminal jurisdiction, because the States do not appear before the Court as subjects of a criminal action.²⁵⁵ In this regard, it is pertinent to reiterate that, in order to establish that a violation of the rights recognized in the Convention has occurred, it is not necessary to prove the responsibility of the State beyond any reasonable doubt, or to identify individually the agents to which the violations are attributed;²⁵⁶ rather, it is sufficient to prove that acts or omissions have been verified that have allowed the perpetration of those violations or that the State has an obligation with which it failed to comply.²⁵⁷

144. In this regard, it is possible to consider that, if the State fails to comply with its obligation of due diligence in a criminal investigation, this may lead to the absence of sufficient evidence to clarify the events that are being investigated, to identify the possible perpetrators and participants, and to determine the eventual criminal responsibilities in the domestic sphere. Consequently, an acquittal may be taken into consideration as a factor to evaluate the State’s responsibility or the scope of this responsibility, but does not constitute *per se* a factor to affirm the absence of the State’s international responsibility, given the difference in the evidentiary standards or requirements in criminal trials and under international human rights law.

ii.3) The application to this case of the context, systematic pattern and modus operandi of enforced disappearances committed by State agents

145. First, it is pertinent to recall that, in the exercise of its contentious jurisdiction, the Court has examined different historical, social and political contexts that have allowed it to situate the

²⁵² Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume IX, annex 12 to the State’s answering brief, folio 4578).

²⁵³ Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State’s final arguments, folio 5427).

²⁵⁴ Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State’s final arguments, folio 5433).

²⁵⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 134, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 133.

²⁵⁶ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 91, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 133.

²⁵⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 172 and 173, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 133.

facts that were alleged to have violated the American Convention in the context of the specific circumstances in which they occurred. Also, in some case the context enabled the Court to characterize the facts as part of a systematic pattern of human rights violations²⁵⁸ and/or conditioned the determination of the international responsibility of the State.²⁵⁹

146. Regarding the use of a context that includes the existence of a systematic pattern of human rights violations to prove the existence of a specific human rights violation in the particular case that is being examined, it is pertinent to recall the first judgment on merits delivered by this Court in which it established the enforced disappearance of Manfredo Velásquez Rodríguez based on the prevailing context in Honduras at the time of the facts. In particular, in that case, the Court concluded: “the following facts have been proved in this proceeding: (1) a practice of disappearance carried out or tolerated by Honduran officials existed between 1981 and 1984; (2) Manfredo Velásquez disappeared at the hands of, or with the acquiescence of those officials within the framework of that practice, and (3) the Government of Honduras failed to guarantee the human rights affected by that practice.”²⁶⁰

147. On other occasions, when determining the context, the facts, and the international responsibility of the States,²⁶¹ the Court has decided to grant special probative value to the reports of the Truth or Historical Clarifications Commissions as relevant evidence. Thus, the Court has indicated that, based on the object, procedure, structure and purpose of their mandate, these commissions can contribute to the construction and preservations of the historical memory, the elucidation of the facts, and the determination of institutional, social and political responsibilities in specific historical periods of a society.²⁶²

148. The Court has already indicated the context in which the facts of this case occurred, based on the report of the CVR; in other words, the historical, social and political factors that existed in Peru at the time of the facts. Thus, it has emphasized the existence of a systematic and, in some case, generalized practice of human rights violations, including extrajudicial executions and enforced disappearances of persons suspected of belonging to illegal armed groups, carried out by State agents (*supra* paras. 53 to 58). The Court has also referred repeatedly to the conclusions of the CVR, following the publication of its final report, to establish the context of the armed conflict in Peru in several cases.²⁶³

²⁵⁸ Cf., *inter alia*, *Case of Goiburú et al. v. Paraguay*, *supra*, paras. 61 and 62; *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 102 and 103, and *Case of Contreras et al. v. El Salvador. Merits, reparations and costs*. Judgment of August 31, 2011. Series C No. 232, paras. 51 to 55 and 94.

²⁵⁹ Cf., *inter alia*, *Case of Goiburú et al. v. Paraguay*, *supra*, para. 63; *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 131, and *Case of García Lucero et al. v. Chile*, *supra*, para. 123.

²⁶⁰ *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 148.

²⁶¹ Cf., *inter alia*, *Case of Myrna Mack v. Guatemala. Merits, reparations and costs*. Judgment of November 25, 2003. Series C No. 101, paras. 131 and 134; *Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 82; *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 128; *Case of Heliodoro Portugal v. Panama*, *supra*, footnote 37, and *Case of Radilla Pacheco v. Mexico*, *supra*, para. 74.

²⁶² Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, paras. 131 and 134, and *Case of Radilla Pacheco v. Mexico* *supra*, para. 74.

²⁶³ Cf. *Case of De La Cruz Flores v. Peru. Merits, reparations and costs*. Judgment of November 18, 2004. Series C No. 115, para. 61; *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 54; *Case of Baldeón García v. Peru*, *supra*, para. 72; *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 197; *Case of La Cantuta v. Peru*, *supra*, para. 80; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra*, paras. 53 to 56; *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*, *supra*, paras. 48 and 49.

149. The Court understands that the State is not disputing the conclusions of the report of the Peruvian Truth and Reconciliation Commission referred to in this Judgment, but is contesting their application to this case in order to determine the existence of the enforced disappearance. Added to this, the State argues that there is direct evidence that disproves a possible attribution of responsibility based on the method used in the *case of Velázquez Rodríguez* mentioned above.

150. On this point, it should be recalled that the Court has always avoided the adoption of a strict determination of the *quantum* of evidence needed to provide grounds for a judgment. This criterion is especially valid as regards the international human rights courts which, in order to determine the international responsibility of a State for a violation of human rights, have considerable flexibility in the assessment of the evidence provided to them concerning the pertinent acts, in accordance with the rules of logic and based on experience, without having to be subject to precise rules of evidence.²⁶⁴ However, the attribution of responsibility to a State for the acts of State agents or private individuals must be established based on the particularities and circumstances of each case.²⁶⁵ Regarding circumstantial evidence, indications and presumption may be used provided that conclusions consistent with the facts can be inferred from them.²⁶⁶ Indicative or presumptive evidence is of special importance in the case of reports of enforced disappearance, because this type of violation is characterized by the attempt to eliminate any evidence that could prove the detention, whereabouts and fate of the victims.²⁶⁷

151. In this regard, the Court notes that, over the period relevant for this case, and according to the conclusions of the CVR, disappearances were carried out selectively (*supra* para. 55). This assertion allows their general or massive occurrence to be discarded, in the sense that a large number of acts of enforced disappearance would be required for a systematic practice; accordingly, a single disappearance could be part of such a practice, if it can be associated with a pattern of action or if it is carried out according to a State-designed plan. In this regard, the CVR established that the Armed Forces approved the systematization of a counterinsurgency strategy, so that at this stage the human rights violations decreased, but were more deliberate or planned than during the preceding stage.²⁶⁸ The Court has also referred above to the *modus operandi* of the enforced disappearances committed by State agents within the framework of this systematic practice.

152. In view of the fact that the pattern of enforced disappearances established by the CVR was associated with the actions of State agents during the armed conflict and that, at the time relevant for this case, this pattern had acquired systematic characteristics, the fact that the province of Cajatambo was under a state of emergency where the Armed Forces were in charge of internal order (*supra* paras. 61, 119 and 121), and that the Palmira Plan of Operations was being executed (*supra* paras. 63 and 64), confirms that this pattern was applicable to that province, even though

²⁶⁴ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 25, 2001. Series C No. 76, para. 51, and *Case of Castillo González et al. v. Venezuela. Merits.* Judgment of November 27, 2012, Series C No. 256, para. 113.

²⁶⁵ Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 113, and *Case of Castillo González et al. v. Venezuela, supra*, para. 113.

²⁶⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130, and *Case of Castillo González et al. v. Venezuela, supra*, para. 113.

²⁶⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 131, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 134.

²⁶⁸ Cf. Truth and Reconciliation Commission, *Informe Final*, 2003, volume VIII, General conclusions, paras. 60 and 61 (evidence file, volume III, annex 13 to the submission of the case, folios 1583 and 1584).

less human rights violations were recorded compared to those occurring in other parts of the country.

153. Regarding the *modus operandi* (*supra* para. 56), even though the Court does not have sufficient evidence to be convinced that the detention was originally carried out due to an initial selection of the victim,²⁶⁹ the fact is that the radiogram sent by Lieutenant Tello Delgado to his superior officer informing him of the detention identified Mr. Osorio Rivera with a pseudonym of a "comrade" (*supra* para. 68). The way in which Osorio Rivera was identified as a possible member of Shining Path in the said radiogram coincides with what the CVR established as part of the *modus operandi* of State agents to select the victims of extrajudicial executions and enforced disappearances. Indeed, the CVR established that "the authors of the enforced disappearance had certain criteria for the selection of victims, in particular based on the general profiles established to define those who could be members or supporters of subversive organizations."²⁷⁰

154. Consequently, the Court concludes that it has been proved that the actions following the detention were in line with the *modus operandi* for enforced disappearances committed by State agents during the relevant period as part of the counterinsurgency strategy, without his whereabouts being known to date.

ii.4) Conclusion

155. Having verified that the evidence provided by the State does not prove that Jeremías Osorio Rivera was released following his detention by members of the Army, added to the fact that the last time that Jeremías Osorio Rivera was seen he was in the State's custody, and that his whereabouts are still unknown, the Court concludes that State agents participated in the disappearance of Jeremías Osorio Rivera. The contextual elements assessed support this conclusion, so that the disappearance of Mr. Osorio Rivera occurred in the context of a systematic and selective practice of enforced disappearance, as part of the State's counterinsurgency policy.

²⁶⁹ The same domestic court held contradictory positions on this aspect: the *tenth finding* indicates that the victim's detention was not carried out in the context of the Palmira Plan of Operations and that the accused did not have prior knowledge that the victim was a "terrorist," while the *sixteenth finding* asserts that "it is not credible that the accused did not know that the victim was considered a subversive." Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State's final arguments, folios 5419 to 5434). In addition, in his statement, Juan Carlos César Tello Delgado affirmed that: "up until that time, [he] did not know that they were subversives, and [he] considered them to be two drunkards, one of them in possession of a weapon," and "up until that time, [he] did not know that the victim was wanted and that the weapon seized belonged to a police agent who had been robbed during an attack." Preliminary statement made by Juan Carlos César Tello Delgado referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4702 and 4703). To the contrary, Aquiles Román Atencio stated that: "[...] around 10 a.m. he went to make inquiries about the detention of Jeremías Osorio, interviewing the soldiers and then the accused, who told him that the victim was detained because he was a terrorist and that he had a weapon that belong to a police agent." Testimonial statement made by Aquiles Román Atencio during the twelfth session of the oral proceeding held on August 5, 2008, referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4727). During the criminal proceeding, it was proved that Jeremías Osorio Rivera was wanted by the DIRCOTE, because on January 1, 1992, he appeared as "could not be found." *Cf.* Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folios 4713 and 4741). In his testimony, Arnulfo Roncal Vargas affirmed that: "the deponent immediately ordered the release because the villagers told him that [the victim] had reincorporated the community and his behavior had changed towards Shining Path because he had joined the ranks of the self-defense committees." Preliminary statement made by Arnulfo Roncal Vargas referred to in the judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State's answering brief, folio 4712).

²⁷⁰ Truth and Reconciliation Commission, *Informe Final*, 2003, volume VI, Chapter 1.2, pp. 84 and 85 (evidence file, volume III, annex 12 to the submission of the case, folios 1529 and 1530).

iii. The refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned

156. According to the definition in the Inter-American Convention on Forced Disappearance of Persons²⁷¹ and the case law of this Court, “one of the characteristics of enforced disappearance, contrary to extrajudicial execution, is that it includes the State’s refusal to acknowledge that the victim is in its custody and to provide information on him, in order to create uncertainty about his whereabouts, life or death, to intimidate, and to eliminate rights.”²⁷²

157. In this specific case, the family members insistently asked the State about the situation of Jeremías Osorio Rivera:

- On April 29, 1991, Porfirio Osorio Rivera returned from performing community work in the Community of Tinta to find out that his brother Jeremías had been detained by members of the battalion; he therefore went to the place of detention together with his mother and his sister-in-law and asked for his brother. The soldiers responded that no one was detained in that place. Then, Lieutenant Tello Delgado came to the gate and stated that “[...] they did not need any advocacy efforts there; that [his] brother had committed a serious crime.”²⁷³ Porfirio Osorio Rivera remained in the place of detention from the morning until 10 p.m. without being attended, and then left (*supra* para. 69).
- The following day, they went to the detention place and asked the soldier who was at the door for Jeremías Osorio Rivera. The soldier said that no one could see him or assist him; they were made to withdraw from the place and the food they had taken for his breakfast was rejected.²⁷⁴ The same day, Jeremías Osorio Rivera was taken to Cajatambo (*supra* para. 70).
- On April 30, 1991, Silvia Osorio Rivera, sister of Jeremías Osorio Rivera, who lived in Cajatambo, found out about the detention through a mutual friend. Immediately she and her husband went to the Counter-subversive Base, but they were unable to get as far as the door. The soldiers told them that no one could attend them; so they return home, and the following day tried to take him breakfast.²⁷⁵
- On May 1, 1991, Porfirio Osorio Rivera met up with his sister in Cajatambo to go to the Counter-subversive Base and ask for Jeremías Osorio Rivera. A sergeant attended them at the Base, and told them that no detainee had arrived there and that Lieutenant Tello Delgado had gone to the hot springs and, also, that it was a feast day and no one would attend them, so they went back to the sister’s house.²⁷⁶
- On May 2, 1991, they returned to the Counter-subversive Base to ask for their brother. Lieutenant Tello Delgado informed them that Jeremías Osorio Rivera had been released. Porfirio Osorio Rivera did not believe this, so Lieutenant Tello Delgado showed him a document which he said proved the release.²⁷⁷ Consequently, Porfirio

²⁷¹ Article II Inter-American Convention on Forced Disappearance of Persons: “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.”

²⁷² *Case of Auzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 91.

²⁷³ Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671).

²⁷⁴ *Cf.* Preliminary statement made by Santa Fe Gaitán Calderón before the Special Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves on November 19, 2004 (evidence file, volume IV, annex 23 to the submission of the case, folios 1688 and 1689).

²⁷⁵ *Cf.* Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310).

²⁷⁶ *Cf.* Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folio 1671), and Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310).

²⁷⁷ *Cf.* Preliminary statement made by Porfirio Osorio Rivera before the Special Provincial Prosecutor for Enforced Disappearances, Extrajudicial Executions and Exhumations of Clandestine Graves on October 18, 2004 (evidence file, volume IV, annex 20 to the submission of the case, folios 1671 and 1672); Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folio 1784); Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5310), and Statement made by Juan Carlos Tello Delgado before the National Criminal Chamber during

Osorio Rivera went to his brother's home in Cochabamba and, when he was told that his brother had not been seen, the family proceeded to look for him without any success (*supra* para. 75).

- Porfirio and Silvia Osorio Rivera went to the office of the Prosecution Service in Cajatambo, where they met Lieutenant Tello Delgado (*supra* para. 76), who said that "your brother will appear in two or three years, because the same thing happened in Ayacucho."²⁷⁸ However, he did not provide further information on the whereabouts of Jeremías Osorio Rivera.

158. Taking into account that Jeremías Osorio Rivera was detained on April 28, 1991, by members of the Cajatambo Counter-subversive Base, and then remained deprived of liberty in the building in Nunumia where the Army patrol was based from where he was unable to depart of his own free will and, on April 30, 1991, he was taken, with his hands tied, to the Cajatambo Counter-subversive Base, the Court concludes that, even though, initially, there was no refusal to acknowledge the detention, by later stating that he had been released without providing information on his whereabouts, the refusal to acknowledge the deprivation of liberty and to reveal the fate or whereabouts of the victim was verified. In addition, the State continues to assert that the victim was released and, consequently, to deny his detention and whereabouts, which has meant that, to date, no response has been obtained concerning his fate.

Conclusion

159. In summary, the Court finds that it has been sufficiently proved that Mr. Osorio Rivera was arrested by members of the Army in the community hall of Nunumia on April 28, 1991, and, subsequently, deprived of liberty in the building in Nunumia where the Army patrol was based, where he was seen by his next of kin for the last time on the morning of April 30, 1991, in the custody of the State, when he was taken to the Cajatambo Counter-subversive Base. Consequently, the military authorities who detained and transferred Mr. Osorio Rivera were responsible for safeguarding his rights. Now that more than 22 years have passed since his detention, the members of Mr. Osorio Rivera's family remain unaware of his whereabouts, despite the steps taken. Therefore, the Court concludes that the State is responsible for the enforced disappearance of Jeremías Osorio Rivera.

B. Violations of Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention and I(a) of the Inter-American Convention on Forced Disappearance of Persons

B.1. Arguments of the parties and of the Commission

160. The Commission affirmed that it was unnecessary to analyze whether the circumstances that surrounded the alleged deprivation of liberty were consistent with one of the elements of Article 7 of the American Convention. To the contrary, according to the Commission, the fact that Jeremías Osorio was forcibly disappeared following his detention allowed it to be concluded that the detention had been illegal, arbitrary and disregarded the guarantees established in the said article of the Convention. The Commission established that, in addition to the physical and mental suffering inherent in the alleged enforced disappearance, Jeremías Osorio Rivera had been subjected to deliberate acts of violence during his transfer by members of the Army on April 30, 1991. The Commission concluded that the acts of violence inflicted on Jeremías Osorio Rivera during his transfer to the Cajatambo Counter-subversive Base on April 30, 1991, had been committed deliberately and had caused him intense physical and mental suffering. Also, in view of

the fifth session of the oral proceeding held on December 21, 2010 (evidence file, volume IX, annex 15 to the State's answering brief, folio 4626).

²⁷⁸ Pre-emptive statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 32 to the submission of the case, folio 1788).

the circumstances in which they had been perpetrated, it could be inferred that the purpose of the said acts of violence had been to punish and intimidate him. Hence, the Commission considered that the said acts of violence constituted torture, in the terms of Article 5(2) of the American Convention. The Commission also alleged the violation of the right to life recognized in Article 4 of the American Convention and indicated that the fact that a person is disappeared over an extended period of time and in a context of violence is sufficient to conclude that the person was deprived of his life. In this regard, the Commission noted that the presumed victim was a civilian, in application of Article 29(b) and taking into account the alleged context of armed conflict in which the alleged facts of this case took place. Moreover, Article 13 of Protocol II establishes the principle of the protection of the civilian population. Lastly, the Commission considered that enforced disappearance seeks to eliminate the juridical existence of the individual in order to remove him from the protection of the law and the justice provided by the latter, so that the individual can be deprived of his rights with impunity, removing him from any possible judicial protection. Consequently, the Commission affirmed that the State is responsible for the violation of the right to juridical personality established in Article 3 of the Convention. The Commission concluded that Jeremías Osorio Rivera was the victim of enforced disappearance committed by members of the Cajatambo Counter-subversive Base who detained him on April 28, 1991. Accordingly, it affirmed that the Peruvian State had failed to comply with the obligations to respect and to ensure the rights established in Articles 3 (juridical personality), 4(1) (life), 5(1) and 5(2) (personal integrity) and 7 (personal liberty) of the American Convention, in relation to the obligation to respect and to ensure the rights, and the obligation established in Article I(a) of the Inter-American Convention on Forced Disappearance of Persons.

161. In relation to Article 7 of the Convention, based on the Court's judgment in the *case of La Cantuta*, the representatives maintained that, since detention is a stage that precedes the victim's disappearance, it is unnecessary to make a detailed analysis of the detention in relation to each of the corresponding guarantees established in this article. In the instant case, Jeremías Osorio Rivera was detained by agents of the Peruvian State, an act that constituted the first stage in his subsequent enforced disappearance, a situation that led to the conclusion that this act was illegal, arbitrary and without strict respect for the guarantees established in the said article. The representatives also noted that the presumed victim was not allowed to eat the food that had been brought for him. In addition, they indicated that, during the transfer, the presumed victim's head was covered by a hood, even though everyone knew who the detainee was. In this regard, they argued that this was to hide the ill-treatment he had suffered. The representatives asserted that, according to the statements taken during the domestic investigation, Jeremías Osorio Rivera's face had been hit. Lastly, they concluded that the State had violated Article 5 of the American Convention, in relation to Article 1(1) of this international instrument to the detriment of Jeremías Osorio Rivera. Regarding the alleged violation of the right to life, the representatives asserted that the State had violated the right to life of Jeremías Osorio Rivera by failing to comply with the obligation to respect and to ensure this right, as a result of the incomplete investigation into the enforced disappearance, facts that constitute a violation of Article 4(1) of the American Convention in relation to Article 1(1) to the detriment of Jeremías Osorio Rivera. Regarding the alleged violation of the right to juridical personality, the representatives indicated that the circumstances of the case made it impossible for Jeremías Osorio Rivera to exercise his rights and, to this date, keep his family members in total uncertainty about the presumed victim's whereabouts and his legal status. As indicated above, the representatives argued that the State had violated Article 3 of the American Convention, in relation to its Article 1(1), to the detriment of Jeremías Osorio Rivera. In sum, the representatives concluded that the State is responsible for the alleged enforced disappearance of Jeremías Osorio Rivera, owing to the supposed acts of the members of the Cajatambo Counter-subversive Base and, accordingly, it is responsible for the violation of Articles 7, 5, 4, and 3 of the American Convention, in relation to Article 1(1) of this international

instrument, as well as for non-compliance with the obligation contained in Article I(a) of the Inter-American Convention on Forced Disappearance of Persons.

162. The State indicated that the Peruvian Constitution allows the police authorities to arrest a person if they are found *in flagrante delicto* and, owing to the severity of crimes of terrorism, it authorized, exceptionally, the preventive detention of those presumed to be implicated in such crimes for no more than 15 days, with the obligation of informing the Public Prosecution Service and the judge. Thus, the State indicated that Jeremías Osorio Rivera was deprived of his liberty because he was presumably found *in flagrante delicto*, as established in article 279 of the Peruvian Criminal Code in force at the time of the facts; furthermore, a state of emergency was in force that had suspended the right to personal liberty. Consequently, the State considered that Jeremías Osorio Rivera had been deprived of his liberty legally with strict respect for the procedures established by Peruvian law in cases of *flagrante delicto* and a state of emergency in force in the area; accordingly, in the specific circumstances of this case, there was a legal justification for the deprivation of liberty and, therefore, it had not violated Article 7(2) of the American Convention. Regarding Article 7(3) of the American Convention, the State considered that the use of force by the members of the Army who detained Jeremías Osorio Rivera was necessary, reasonable and proportionate, because this was a person in possession of a firearm and explosives in a context of acts of terrorism. Therefore, the State affirmed that it could not be argued that Jeremías Osorio Rivera was unaware of the reason for the deprivation of his liberty, when this was evident. In sum, the State argued that it had not violated Article 7(3) of the American Convention. Finally, the State argued that it had not violated Article 7(5) of the American Convention because, at the domestic level, it had been found that the requirement to communicate the detention to a superior officer had been proved; moreover, this superior officer was one of those responsible for the control of internal order and the international responsibility could not be transferred to him or the failure of Mr. Osorio River, his lawyer and his next of kin to file an application for *habeas corpus* immediately after Jeremías Osorio Rivera's arrest. In conclusion, the State asked the Court to declare that it had not violated Article 7 of the American Convention in relation to Article 1(1) of this instrument, to the detriment of Jeremías Osorio Rivera.

163. The State denied that the right to humane treatment of Jeremías Osorio Rivera had been violated and assured that, as evidence of this, the other person who was detained at the same time had not alleged violations of his personal integrity. In addition, the State emphasized that some witnesses had indicated that moments before his deprivation of liberty, Mr. Osorio Rivera had been in a fight with his cousin, and he might have received some blows that would be those to which his family members referred. Furthermore, with regard to Article 5(2) of the American Convention, the State rejected the allegations that acts that constituted torture had been committed against Jeremías Osorio Rivera. The State also indicated that witnesses had seen Jeremías Osorio Rivera leave the Cajatambo Counter-subversive Base in good shape; hence, the State affirmed that this proves that there was no violation of his integrity, or to such a degree that it would constitute cruel, inhuman or degrading treatment or punishment and, in particular, acts of torture against him. According to the State, the facts of this case are not consistent with the *modus operandi* of enforced disappearance and, therefore, it cannot be inferred that Jeremías Osorio Rivera was interrogated violently and, above all, tortured during his detention. In conclusion, the State considered that the facts of the case do not include the necessary elements to be classified as cruel, inhuman or degrading treatment and, especially, acts of torture, as established in Article 5(2) of the American Convention, in relation to Article 1(1) of this instrument.

164. The State indicated that there was no basis for presuming that Jeremías Osorio Rivera had been deprived of his life by State agents. Accordingly, it concluded by arguing that it was not responsible for the violation of Article 4 of the American Convention, in relation to the obligations contained in Article 1(1) thereof. In addition, the State asserted that, since there was no evidence

to infer that it was internationally responsible for the supposed enforced disappearance of Jeremías Osorio Rivera, it had not failed to comply with the obligation established in Article I of the Inter-American Convention on Forced Disappearance, because it had not perpetrated, permitted or tolerated the supposed enforced disappearance of Jeremías Osorio Rivera. Furthermore, the State indicated that it could not be attributed with his possible removal from legal protection or the denial of his existence in order to place him in a legal limbo, because violation of the right to juridical personality is a consequence of responsibility for an enforced disappearance, a relationship of cause and effect that is absent in this case. The State affirmed that the purpose of the Certificate of Absence due to Enforced Disappearance is to prevent the members of Mr. Osorio Rivera's family from finding themselves in an uncertain legal situation with regard to his factual absence. Based on the foregoing, the State asked the Court to declare that it had not violated the right to recognition of juridical personality established in Article 3 of the American Convention, in relation to the obligations contained in Article 1(1) of this treaty, to the detriment of Jeremías Osorio Rivera.

B.2. Considerations of the Court

165. The analysis of a possible enforced disappearance should not focus merely on the detention, or the possible torture, or the risk of loss of life, from an isolated, divided and fragmented perspective, but rather the focus should be on all the facts that are present in the case that the Court is considering, taking into account the Court's case law when interpreting the American Convention.²⁷⁹

166. Two different positions have been presented as to how the Court should analyze the possible violation of Article 7 of the American Convention. On the one hand, the Commission and the representatives considered that, since the detention was the first stage in an enforced disappearance, it was unnecessary to make a detailed analysis of Article 7 and, on the same basis, the detention should be considered "illegal and arbitrary." On the other hand, the State argued that it acted in accordance with the laws in force when it detained Jeremías Osorio Rivera *in flagranti*. In this regard, there is a dispute as to whether the detention was an isolated event because he was *in flagrante delicto* or whether it responded to the objectives of the Palmira Plan of Operations.

167. The Court observes that, even though the initial detention was carried out in keeping with the attributes of the military forces during the state of emergency in the province of Cajatambo (*supra* para. 123), the deprivation of liberty of Mr. Osorio Rivera by members of the Army was a step prior to his disappearance. In the Court's opinion, the transfer of Mr. Osorio Rivera, deprived of liberty, to the Cajatambo Counter-subversive Base without being brought before the competent authority (*supra* para. 124) or his entry into the Base being registered evidently constituted an abuse of power that, under no concept, can be understood as the exercise of military activities to ensure national security and maintain public order on national territory, because the purpose was not to bring him before a judge or other competent authority and to make him available to them, but to execute him or make him disappear. Consequently, the State is responsible for the violation of Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Jeremías Osorio Rivera.

168. Thus, the disappearance of Mr. Osorio Rivera is not only contrary to the right to personal liberty, but also took place in the context of a pattern of selective enforced disappearances (*supra* para. 155), which leads to the conclusion that it placed him in a serious situation of vulnerability

²⁷⁹ Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 112, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, *supra*, para. 196.

and risk of suffering irreparable harm to his personal integrity and his life. The Court finds it reasonable to presume, based on the body of evidence, that Mr. Osorio Rivera suffered treatment contrary to the dignity inherent in the human being while he was in the custody of the State. The foregoing constituted a violation of Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument. In addition, the Court considers that the Commission's argument that this treatment should be classified as torture refers to violations that have already been examined under the right to personal integrity, so that it does not find it necessary to make an additional ruling in that regard.

169. In the case of Article 4 of the American Convention, the Court has considered that, owing to the nature of enforced disappearance, the victim is in an aggravated situation of vulnerability, which gives rise to the risk that several different rights may be violated, including the right to life. In addition, the Court has established that enforced disappearance has frequently included the execution of those detained, in secret and without any type of trial, followed by the concealment of the corpse in order to erase any material trace of the crime and to ensure the impunity of those who committed it, which signifies a violation of the right to life recognized in Article 4 of the Convention.²⁸⁰

170. With regard to the alleged violation of Article 3 of the Convention, the Court notes that, according to its most recent case law, owing to the multiple and complex nature of this gross human rights violation, an enforced disappearance can include a specific violation of this right, because the consequence of the refusal to acknowledge the deprivation of liberty or whereabouts of the person is, together with the other elements of the disappearance, the "removal from the protection of the law" or the violation of the personal and legal safety of the individual that directly prevents the recognition of juridical personality.²⁸¹ Over and above the fact that the disappeared person cannot continue enjoying and exercising others and, eventually, all the rights to which he is entitled, his disappearance seeks not only one of the most serious forms of removing a person from the whole sphere of the law, but also to deny his very existence, leaving him in a sort of legal limbo or indeterminate legal situation before society and the State.²⁸² In this case, the Court considers that Jeremías Osorio Rivera was placed in a situation of legal indetermination that prevented him from the possibility of possessing or exercising his rights in general, so that it led to a violation of his right to juridical personality.

171. Lastly, based on all the preceding considerations, the Court concludes that Peru incurred international responsibility for the enforced disappearance of Jeremías Osorio Rivera that started on April 30, 1991, without his whereabouts being known to date, so that it violated the rights recognized in Articles 7, 5(1), 5(2), 4(1), and 3 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Jeremías Osorio Rivera. Taking this into account, the Court finds that the State is responsible for the violation of the right to personal liberty and personal integrity, to life, and to juridical personality of Jeremías Osorio Rivera, in relation to the provisions of Article I(a) of the Inter-American Convention on Forced Disappearance of Persons. The assessment of the obligation to ensure the said rights by a diligent and effective investigation into what happened will be made in the following chapter of this Judgment.

²⁸⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 157, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 185.

²⁸¹ Cf. *Case of Anzaldo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, paras. 90 and 91, and *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs. Judgment of September 4, 2012, Series C No. 250*, para. 118.

²⁸² Cf. *Case of Anzaldo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, paras. 90 and 91, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 188.

VII-2

RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS AND THE OBLIGATION TO ADOPT PROVISIONS OF DOMESTIC LAW, AS WELL AS TO THE OBLIGATIONS CONTAINED IN ARTICLES I AND III OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS, TO THE DETRIMENT OF JEREMÍAS OSORIO RIVERA AND OF HIS FAMILY MEMBERS

172. In this chapter, the Court will summarize the arguments of the parties and the Inter-American Commission, and will then rule on the merits of the matter in relation to the alleged violations of Articles 8(1) and 25(1) of the American Convention and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.²⁸³ It will then rule on the alleged violations of Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

A. Arguments of the parties and of the Commission

173. Regarding the first criminal investigation, the Commission argued that the judicial and prosecution authorities involved in the proceedings failed to order basic measures, such as statements from eyewitnesses of the detention of Jeremías Osorio Rivera, despite the civil party's request. It added that all these omissions impaired the right of the family members to know the truth. The Commission also indicated that the proceedings were delayed without any justification owing to successive decisions to expand the procedural time frames and that, in December 1991 and January 1992, the Cajatambo Investigating Court which was hearing the case did not have a judge. Regarding the investigation by the Third Permanent Military Court of Lima, the Commission underlined that neither did this court take relevant measures. The Commission emphasized that allowing military courts to hear cases of crimes involving human rights violations is *per se* contrary to Article 8(1) of the Convention and that "between July 1992 and February 1996, the criminal proceedings into Jeremías Osorio Rivera's disappearance were heard by courts and judges that not only lacked guarantees of impartiality and independence, but that also acted negligently in order to keep serious human rights violations committed by State agents under a blanket of impunity." Referring to the criminal proceeding opened in the ordinary jurisdiction, the Commission emphasized that a series of measures had been taken, but, nevertheless, the omission of an on-site inspection of the sites where the victim could have been taken during the first days of his detention, and the failure to summon eyewitnesses to testify has had serious consequences for the discovery of the whereabouts of Jeremías Osorio Rivera and of the truth of what happened, owing to the passage of time. Also, according to the Commission, another obstacle to the proceedings has been the denial of information by the Personnel Directorate of the Ministry of Defense concerning the military personnel who were serving at the Cajatambo Counter-subversive Military Base at the date of Jeremías Osorio Rivera's disappearance. During the public hearing, the Commission affirmed that the final judgment had deficiencies such as the fact that it indicated that Jeremías Osorio Rivera did indeed suffer ill-treatment and inhuman treatment, without ordering the investigation *ex officio* of this situation. The Commission also advised the State that it should abstain from citing the principle of *ne bis in idem*, because the acquittal was made possible owing to an investigation that was incompatible with the American Convention, because of serious defects as regards the standards for due diligence in relation to enforced disappearance. The Commission indicated that the State persisted in failing to comply with the obligation to adopt domestic legal

²⁸³ According to the decision taken on its competence *ratione temporis* concerning possible violations of the Inter-American Convention on Forced Disappearance of Persons (*supra* paras. 27 to 35), the Court can rule on events that took place on or after March 15, 2002.

provisions in the terms of Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons. The Commission added that the acquittal was decided based on article 320 of the Peruvian Criminal Code because this article defines the analytical framework for the judges in cases of enforced disappearance, limiting the use of indicative evidence, which is so crucial in these cases. It concluded that the said judgment reveals the structural defects in the investigation of enforced disappearances. The Commission stated that the promulgation of Laws Nos. 26,479 and 26,492 obstructed the obligation to provide truth and justice to the members of Jeremías Osorio Rivera's family by regulating the prohibition to prosecute crimes committed by State agents or civilians as a result of the counter-terrorism efforts. The Commission added that, even though these laws were not applied in the decision to dismiss the criminal complaint, they preventing the opening of new investigations to clarify the facts of the case. According to the Commission, all the above constituted a violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument.

174. The representatives agreed with the Commission's arguments and, also, stated that the proceedings opened based on the complaint filed by Porfirio Osorio Rivera did not achieve the expected results and that extremely important measures were not taken during the investigation. In their final arguments, the representatives indicated that the investigation into the disappearance of Jeremías Osorio Rivera was opened at the request of Porfirio Osorio Rivera and not *ex officio*, as it should have been in this type of case. The representatives recalled that the intervention of the military system of justice as a jurisdiction to investigate, prosecute and punish the authors of gross human rights violations is contrary to the American Convention. They asserted that the only purpose of this jurisdiction was to remove those accused of very serious crimes from criminal prosecution in the ordinary jurisdiction and to ensure their impunity. Consequently, the representatives considered that the State had violated the right to an ordinary judge and to due process of law, which is closely related to the right of access to justice of the victim and his family members. The representatives indicated that, in the new investigation, measures were not taken to locate the victim's remains, to reconstruct the events, to inspect the Cajatambo Contra-subversive Military Base, or to obtain information on those who served in it. They added that, in this new investigation, the State had merely repeated the accusations made during the initial investigation, after taking some statements that had been requested in the days following the events. They also referred to the ruling declaring that the judgment deciding the acquittal was final, because "it is surprising that the ruling was delivered one day before the hearing before the Inter-American Court"; also, that two of the judges who signed the ruling had previously, following the first annulment, denied credibility to the release document and the testimony received, yet failed to explain in this ruling the fact that made them change their minds with regard to these two points on which the acquittal was based. According to the representatives, "the State agencies not only failed to respect due diligence, but also generated impunity, because their actions were aimed at concealing the authors of the acts of this crime." The representatives also argued the violation of the right to the truth of the victim and his family, which they consider is protected by both Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument. Furthermore, the representatives argued the failure to define the crime of enforced disappearance adequately in article 320 of the Peruvian Criminal Code. Likewise, they referred to plenary decision 09-2009/CJ-116, indicating that it had created a loophole for impunity with regard to events that had occurred before April 8, 1991, the date on which the crime of enforced disappearance had been incorporated into Peruvian law. They added that, the said decision supposes a State practice that deviates from the case law of the Inter-American Court and that, although it is not a legislative measure, but rather a measure adopted by the State, its contents limit the enjoyment of the rights recognized by the American Convention, to the detriment of the victims of enforced disappearance and their next of kin, thus failing to comply with the obligation imposed by Article 2 of the American Convention. The representatives indicated that, following the confirmation of the dismissal of the case in the

criminal proceeding in the military jurisdiction, the State failed to take any action for eight years. They indicated that, during the first four years, Laws Nos. 26,479 and 26,492 incorporated impunity for gross human rights violations into law, and that, during the four following years, a democratic regime was in place that failed to order *ex officio* a new investigation into the disappearance of Jeremías Osorio Rivera. The representatives also considered that, although the proceeding concerning Jeremías Osorio Rivera before the military jurisdiction was not archived as a result of the entry into force and application of Laws Nos. 26,479 and 26,492, they did represent a legal obstacle in the search for truth and justice for the disappearance of Jeremías Osorio Rivera, because such events could not be investigated and because constitutional control of these norms was not possible. Therefore, they concluded that “the State failed to comply with its obligation to adapt its domestic law to the American Convention, as established in Article 2 of this international instrument during the period when the amnesty laws had legal effects.”

175. The State underscored that, for the purposes of the analysis made by the Court, it would only take into account those measures ordered by the authorities and that, in principle, it was not for the Court to determine whether specific investigative actions or measures were appropriate or useful. According to the State, during the investigation, different measures were taken that responded to standards of due diligence and that, even though there may have been some omissions and delays in implementing some of them, taken as a whole, these were not sufficiently serious to constitute the State’s international responsibility for a violation of the rights to judicial guarantees and protection. The State indicated that, “at the date of the events of this case, the intervention of the military system of justice was understood to be in keeping with the standards of the Inter-American Court at that time, because the Court had not yet ruled on this matter, and with the domestic legal framework.” It concluded by indicating that the current standards established by the inter-American human rights system could not be required of the Peruvian State in this case, because this would entail their retroactive application to the case *sub judice*. The State pointed out that “for the effects of this case, and considering that Jeremías Osorio had supposedly been the subject of alleged enforced disappearance as of his transfer from Nunumia to Cajatambo, it was unimportant to conduct the said inspection in Nunumia.” During the public hearing, the State referred to the final judgment of the Supreme Court, which established that “regarding the record of release, the different appeals have indicated that this is merely an attempt to justify and to conceal the enforced disappearance to which the victim was subjected; however, it has not been proved that the document was a forgery.” In its final arguments, the State added that, although the supreme final judgment was published on August 27, 2013, on the Judiciary’s institutional website, the decision was taken on April 17, 2013, and not because of the public hearing. Lastly, the State indicated that the said judgment reflects and rectifies the defects identified by the Supreme Court in its first final judgment, so that it cannot be asserted that the two judges who indicated their disagreement with the first final judgment now support the second one. The State affirmed that the investigation into the facts of this case is fairly complex because it relates to a detention and subsequent disappearance; that the State’s duty to meet the requirements of justice prevails over the guarantee of a reasonable time and that the judicial authorities acted fairly promptly, and that once the State authorities became aware of the facts, the Provincial Prosecution Service for Civil and Criminal Matters opened the investigation. The State indicated that, “in this case there is no relationship between the absence of criminal responsibility of the presumed author of the crime of enforced disappearance at the domestic level, with the wording of the definition of the crime of enforced disappearance,” and that the investigations have approached the events in accordance with the crime of enforced disappearance in force in Peruvian law at the time. The supposed incorrect definition of the crime has not obstructed the implementation of the investigations or proceedings opened for the enforced disappearance of Jeremías Osorio Rivera. Added to this, according to the State, in January 2012, a proposal was presented to the Ministry of Justice and Human Rights to amend the definition of the crime of enforced disappearance, and this was forwarded to the President of the Congress of the Republic to serve as a preliminary bill to

amend article 320 of the Criminal Code. In addition to this initiative, there are other proposals to amend this article, which are before the Justice and Human Rights Committee for discussion and the issue of the subsequent opinion, and they will be discussed in the 2012-2013 legislative period. The State added in this regard that, recently, Congress had approved the United Nations International Convention for the Protection of All Persons from Enforced Disappearance. The State mentioned that plenary decision 09-2009/CJ-116 contains parameters for jurisprudential interpretation, but the criminal chambers do not have to follow them precisely. Lastly, the State affirmed that amnesty laws Nos. 26,479 and 26,492 were not applied in the investigations conducted into the events and no evidence has been provided that any of the supposed omissions or the negligence denounced by the petitioners were justified by the fact that the amnesty laws were in force; thus the reference to them has no purpose. The State concluded by indicating that it considered that it was not responsible for the violation of the rights to judicial guarantees and judicial protection of Jeremías Osorio Rivera and his next of kin, and asked the Court to declare that it had not violated Articles 8 and 25 of the American Convention in relation to Articles 1 and 2 of this instrument and I and III of the Inter-American Convention on Forced Disappearance of Persons.

B. Considerations of the Court

B.1. The obligation to investigate in cases of enforced disappearance

176. First, it is pertinent to recall that the systematic practice of enforced disappearance supposes the disregard of the duty to organize the State apparatus in order to ensure the rights recognized in the Convention, and that this produces the conditions of impunity so that this type of act is repeated.²⁸⁴ Hence, the importance that the State adopt all necessary measures to investigate and punish those responsible, as appropriate; to establish the truth of what happened; to locate the victims' whereabouts and advise the family members, and also to provide fair and adequate reparation, as appropriate.

177. The obligation to investigate human rights violations is one of the positive measures that the State must adopt to ensure the rights recognized in the Convention.²⁸⁵ Thus, as of its first judgment, this Court has underscored the importance of the State's obligation to investigate and to punish human rights violations,²⁸⁶ which acquires special importance in relation to the severity of the crimes committed and the nature of the rights harmed.²⁸⁷

178. This Court has considered that, once an enforced disappearance has occurred, it must be considered an illegal act that may result in the imposing of punishment on whosoever commits, instigates or conceals it, or in any way participates in its perpetration. Consequently, the Court has considered that, whenever there are reasonable grounds to suspect that a person has been subjected to enforced disappearance, a criminal investigation must be opened.²⁸⁸ This obligation is

²⁸⁴ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 158, and *Case of Contreras et al. v. El Salvador, supra*, para. 126.

²⁸⁵ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 166 and 176, and *Case of Luna López v. Honduras, supra*, para. 153

²⁸⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs. Judgment of October 25, 2012. Series C No. 252*, para. 127.

²⁸⁷ Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 128, and *Case of García Lucero et al. v. Chile, supra*, para. 149.

²⁸⁸ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 65, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 241.

irrespective of whether a complaint has been filed because, in cases of enforced disappearance, international law and the general obligation of guarantee impose the obligation to investigate the case *ex officio*, immediately, and in a genuine, impartial and effective manner; hence, it does not depend on the procedural initiative of the victim or his next of kin or on the provision of probative elements by private individuals.²⁸⁹ In this regard, the Court has indicated that the authorities must conduct the investigation as an inherent legal obligation, and not cause this burden to fall on the initiative of the next of kin.²⁹⁰ This is an essential and conditioning factor for the protection of the rights impaired by these situations.²⁹¹ Consequently, the investigation must be conducted using all available legal means and it must be aimed at discovering the truth and at the pursuit, capture, prosecution and eventual punishment of all the masterminds and perpetrators of the facts, especially when State agents are or could be involved.²⁹² Likewise, impunity²⁹³ must be eradicated by the establishment of both general responsibilities – of the State – and individual responsibilities – criminal, or of any other kind, of its agents or of private individuals.²⁹⁴ In compliance with this obligation, the State must remove all the obstacles, *de facto* and *de jure*, that maintain impunity.²⁹⁵

179. Furthermore, in cases of enforced disappearance, the investigation must have certain specific connotations that arise from the nature and complexity of the phenomenon investigated; in other words, the investigation must also include all the actions required to determine the fate of the victim and his whereabouts.²⁹⁶ The Court has already explained that the obligation to investigate facts of this nature subsists while uncertainty about the final fate of the disappeared person remains, because the right of the victim's next of kin to know what happened to him and, if appropriate, where his remains are, represents a fair expectation that the State must satisfy with all the means available to it.²⁹⁷

180. In sum, owing to the nature and seriousness of the facts, especially if a context of the systematic violation of human rights exists, States are obliged to conduct an investigation with the above-mentioned characteristics and the competent authorities must establish the criminal responsibilities strictly observing the requirements of due process of law established in Article 8 of the American Convention.

²⁸⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 241.

²⁹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of García and family members v. Guatemala, supra*, para. 132.

²⁹¹ Cf. *Case of the Pueblo Bello Massacre v. Colombia, supra*, para. 145, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 197.

²⁹² Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra*, para. 155, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs. Judgment of August 26, 2011. Series C No. 229, para. 115.*

²⁹³ The Court has defined impunity as "the complete absence of the investigation, pursuit, capture, prosecution and sentencing of those responsible for the violations of the rights protected by the American Convention". *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, paras. 173, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, footnote 303.

²⁹⁴ Cf. *Case of Goiburú et al. v. Paraguay, supra*, para. 131, and *Case of Contreras et al. v. El Salvador, supra*, para. 128.

²⁹⁵ Cf. *Case of Myrna Mack Chang v. Guatemala, supra*, para. 277, and *Case of Contreras et al. v. El Salvador, supra*, para. 128.

²⁹⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 191, para. 80, and Case of García and family members v. Guatemala, supra*, para. 134.

²⁹⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 181, and *Case of García and family members v. Guatemala, supra*, para. 134.

B.2. Lack of due diligence in the criminal investigations

181. The Court must now analyze whether the State conducted the criminal investigations with due diligence and within a reasonable time, and whether these investigations have constituted effective remedies to ensure the right of access to justice and to know the truth of the family members. To this end, the Court may examine the respective domestic proceedings.²⁹⁸

182. The Court underscores that, for an investigation of an enforced disappearance to be conducted effectively and with due diligence,²⁹⁹ all the necessary means must be used to promptly take those measures and make those inquiries that are essential and appropriate in order to clarify the fate of the victims and to identify those responsible for their enforced disappearance.³⁰⁰ To this end, the State must provide the pertinent authorities with the logistic and scientific resources required to gather and process the evidence and, in particular, the power to access documentation and information that is relevant to investigate the facts denounced and to obtain indications or evidence of the victims' whereabouts.³⁰¹

183. Since three different stages can be distinguished in the investigations into the enforced disappearance of Jeremías Osorio Rivera, which culminated in the acquittal of the only person prosecuted, the Court will now analyze: (i) the first investigation conducted in the ordinary jurisdiction between May 1991 and July 1992; (ii) the investigation conducted by the Third Permanent Military Court of Lima from July 1992 to October 1996, and (iii) the new investigation before the special jurisdiction from 2004 to 2013.

i. First criminal investigation in the ordinary jurisdiction

184. The first investigation was opened based on the criminal complaint filed by Porfirio Osorio Rivera, the presumed victim's brother, on May 9, 1991 (*supra* para. 77), and it was only open for one year because the Investigating Court disqualified itself from hearing the case in favor of the military jurisdiction (*supra* para. 84). During this first investigation, the preliminary statement of the accused, the statement of the complainant, and graphology and dactylography appraisals of the record of release of May 1, 1991, were received (*supra* paras. 79 to 81). However, the court failed to take the statements of eyewitnesses of the events or of members of the presumed victim's family who could have provided essential information, and omitted to make an on-site inspection. The latter resulted in financial expenditure for the complainant,³⁰² because the implementation of the measures was conditioned on the complainant obtaining transport, and this expenditure was not reimbursed when the measure was not taken (*supra* para. 80). In addition, no information was requested with regard to the military personnel serving on the Cajatambo Contra-subversive Military Base, which belonged to the 77th Armored Infantry Battalion, during April 1991. The Court considers that these omissions in the said investigation were of an essential nature in order to

²⁹⁸ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 126.

²⁹⁹ Cf. Article I(b) of the Inter-American Convention on Forced Disappearance of Persons. See, also, Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance.

³⁰⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 135.

³⁰¹ Cf. *Case of Tiu Tojin v. Guatemala. Merits, reparations and costs. Judgment of November 26, 2008. Series C No. 253*, para. 327, and *Case of the Massacres of El Mozote and nearby places v. El Salvador, supra*, para. 313.

³⁰² Cf. Brief addressed to the Cajatambo Investigating Judge of December 6, 1991 (evidence file, volume IV, annex 48 to the submission of the case, folio 1832).

discover the legal truth, because they were normally appropriate and, in any case, irreplaceable, to elucidate the fate of the victim and to identify those responsible for his disappearance.

185. In this regard, the rights that are being investigated make it necessary to multiply efforts as regards the measures that must be taken in order to achieve their objective, because the passage of time bears a directly proportionate relationship to the limitation – and in some case, the impossibility – of obtaining evidence and/or testimony, making it difficult and even useless or ineffective, to carry out probative measures in order to clarify the facts that are being investigated,³⁰³ to identify the possible authors and participants, and to establish the eventual criminal responsibilities, as well as to clarify the fate of the victim and to identify those responsible for his disappearance.

186. Based on the foregoing, this Court concludes that the first investigation before the ordinary jurisdiction was not conducted in a serious, effective and exhaustive manner.

ii. Investigation before the Third Permanent Military Court of Lima

187. In relation to the intervention of the military jurisdiction to examine acts that constitute human rights violations, this Court considers that it has ruled abundantly in this regard and, for the effects of the instant case, finds it sufficient to reiterate that, under the democratic rule of law, the military criminal jurisdiction must have a restrictive and exceptional scope and its purpose must be to protect special legal rights related to the functions intrinsic to the military forces. Consequently, as the Court has indicated previously, the military jurisdiction should only try soldiers on active duty for the perpetration of offenses or misdemeanors that, owing to their nature, violate legal rights relating to the military system.³⁰⁴

188. In addition, taking into account the nature of the offense and the legal right violated, the military criminal jurisdiction is not the competent jurisdiction to investigate and, if appropriate, prosecute and punish the authors of human rights violations; but rather the prosecution of those responsible corresponds always to the ordinary system of justice. Thus, the Court has indicated that “[w]hen military justice assumes competence for a matter that should be heard by ordinary justice, the right to a natural judge and, *a fortiori*, to due process, is infringed,”³⁰⁵ and this is closely related to the right of access to justice. The judge in charge of hearing a case must be competent, as well as independent and impartial.³⁰⁶ Hence, the victims of human rights violations and their next of kin have the right that these violations be heard and decided by a competent court, in accordance with due process of law and access to justice.³⁰⁷

189. With regard to Peru’s argument that, at the date of the facts of the case, the intervention of military justice was understood to be in keeping with the standards of the Inter-American Court at that time, the Court points out that, at least as of the judgment in the *case of Durand and Ugarte*

³⁰³ Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 150, and *Case of García and family members v. Guatemala*, *supra*, para. 135.

³⁰⁴ Cf. *Case of Castillo Petrucci et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 59, para. 128, and *Case of the Santo Domingo Massacre v. Colombia*, *supra*, para.158.

³⁰⁵ *Case of Castillo Petrucci et al. v. Peru*, *supra*, para. 130, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 197.

³⁰⁶ Cf. *Case of Castillo Petrucci et al. v. Peru*, *supra*, para. 130, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra*, para. 197.

³⁰⁷ Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 275, and *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251, para. 200.

v. Peru, in which it stated that the military criminal jurisdiction only applied to “soldiers for the perpetration of offenses or misdemeanors that, owing to their nature, violate legal rights intrinsic to the military system,”³⁰⁸ it has been the Court’s consistent case law that the military jurisdiction is not the competent jurisdiction to investigate and, when appropriate, prosecute and punish the perpetrators of alleged human rights violations; but rather the prosecution of those responsible corresponds always to the ordinary system of justice.³⁰⁹ The factual situation of the *Durand and Ugarte* case referred to the subduing of a prison riot in 1986, during which soldiers “used disproportionate force that far exceeded their task and that resulted in the death of a large number of prisoners.”³¹⁰ Therefore, this consideration is also applicable in the instant case in which the events occurred in 1991. In addition, the Court reiterates that, regardless of the year in which the violations occurred, the guarantee of an ordinary judge must be analyzed pursuant to the object and purpose of the American Convention, which provides effective protection to the individual.³¹¹

190. The allegations concerning a disappearance relate to acts that are closely related to criminal acts and definitions that bear no relationship to the military discipline or mission. To the contrary, the alleged acts committed by military personnel against Jeremías Osorio Rivera violated rights protected by domestic criminal law and the American Convention, such as the victim’s dignity, and his personal liberty and integrity. Consequently, the Court reiterates that the criteria that human rights violations should be investigated and prosecuted under the ordinary jurisdiction does not arise from the gravity of the violations, but rather from their very nature and from the right protected.³¹² It is evident that this conduct is clearly contrary to the obligations to respect and to protect human rights and, therefore, it is excluded from the competence of the military jurisdiction. Accordingly, the intervention of the military system of justice to investigate the enforced disappearance of Jeremías Osorio Rivera between July 22, 1992, and October 1996, contravened the parameters of exceptionality and restriction that characterize it, and signified the application of a jurisdiction that operated without taking into account the nature of the acts involved.³¹³

191. Based on the above, the Court concludes that the State violated the guarantee of an ordinary judge in relation to the investigation of the enforced disappearance of Jeremías Osorio Rivera by the military jurisdiction.

iii. Second criminal investigation in the ordinary jurisdiction

192. The last valid jurisdictional action of the first proceeding was in July 1992, without reaching a conclusive decision. Since proceedings in the military jurisdiction are contrary to the American Convention and the first action in the ordinary jurisdiction in the second proceeding held based on the complaint filed by Porfirio Osorio Rivera took place in 2004, the Court verifies a lack of jurisdictional actions for more than 12 years. This is contrary to inter-American case law which indicates that a prolonged delay may, in itself, become a violation of judicial guarantees.³¹⁴

³⁰⁸ *Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 118.

³⁰⁹ *Cf. Case of Durand and Ugarte v. Peru. Merits, supra*, paras. 117, 118, 125 and 126, and *Case of the Santo Domingo Massacre v. Colombia, supra*, para. 158.

³¹⁰ *Case of Durand and Ugarte v. Peru. Merits, supra*, para. 118.

³¹¹ *Cf. Case of Vélez Restrepo and family members v. Colombia, supra*, para. 244.

³¹² *Cf. Case of Vélez Restrepo and family members v. Colombia, supra*, para. 244.

³¹³ *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 177, and *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 197.

³¹⁴ *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Torres Millacura v. Argentina, supra*, para. 116.

193. Furthermore, according to several testimonies in the case file³¹⁵ and also the indictment,³¹⁶ Jeremías Osorio Rivera suffered physical injuries. The judgment of the National Criminal Chamber of November 4, 2011, considered that “even though the witnesses [...] have indicated that the victim had been ill-treated, because his face was bruised, this cannot be attributed to the accused because there is no appropriate evidence to verify this, and the said assertions are only conjectures, especially since the said statements, as well as that of the accused, indicate that the victim had been in a fight with his cousin, Gudmer Zárate Osorio, while both of them were inebriated, and this fight was the reason they were both detained.”³¹⁷ The foregoing reveals that no importance was given to the line of investigation relating to the hypothesis of the physical injuries suffered by Jeremías Osorio Rivera, so that all the violations, which were evidently very serious, were not explored.

194. The Court has considered that, in the case of acts such as those alleged in this case, given their context and complexity, it is reasonable to consider that there are different degrees of responsibility at different levels.³¹⁸ In the instant case, only the criminal responsibility of Lieutenant Tello Delgado has been assessed. However, the context in which the events occurred obliged the State to identify all the members of the patrol that was based in Nunumia and that transferred Mr. Osorio Rivera towards Cajatambo, and to investigate the degree of their participation in the perpetration of the enforced disappearance. This is not reflected in the investigations, because all the measures were not exhausted to identify other possible participants in the facts and, if appropriate, implicate them in the proceedings.

195. To the contrary, an obstruction can be observed, because the General Secretariat and the Personnel Directorate of the Ministry of Defense have reported that they have no information on the military personnel who served on the Cajatambo Contra-subversive Military Base at the date of the disappearance of Jeremías Osorio Rivera.³¹⁹ This Court finds that the said denial prevented the

³¹⁵ Cf. Preliminary statement made by Porfirio Osorio Rivera before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, volume IV, annex 20 to the submission of the case, folios 1670 to 1674); Testimonial statement made by Santa Fe Gaitán Calderón before the Court for Civil and Criminal Matters of Cajatambo on July 7, 2006 (evidence file, annex 22 to the submission of the case, folios 1684 to 1686), and Statement made by Aquiles Román Atencio before the National Criminal Chamber during the eighth session of the oral proceeding held on January 25, 2011 (evidence file, volume VII, annex 13 to the brief with motions, arguments and evidence, folio 3543).

³¹⁶ Cf. Supreme final judgment R.N. No. 1071-2012 delivered by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State's final arguments, folios 5419 to 5434).

³¹⁷ Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume IX, annex 12 to the State's answering brief, folio 4566).

³¹⁸ Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 203, and *Case of Contreras et al. v. El Salvador*, *supra*, para. 150.

³¹⁹ Cf. Note No. 2057 SGMD-C/1 of September 16, 2005, issued by Secretary of the Ministry of Defense advising that, the archives of the 18th Armored Brigade contained no information on the military personnel who served on the Cajatambo Contra-subversive Military Base in 1991 (evidence file, volume x, annex 81 to the State's answering brief, folio 4993); Decision of December 15 2006, by which Fourth Supraprovincial Court decided to send an official note to the Ministry of Defense requesting it provide information, as soon as possible, on the military personnel who served on the Cajatambo Contra-subversive Military Base, and who belonged to the 77th Armored Infantry Battalion Unit, and regarding military personnel who served in the DAS Cajatambo during April 1991 (evidence file, volume x, annex 78 to the State's answering brief, folio 4975); Note No.2361 S-1.a/1-4/02.32.01 of November 20, 2006, from the Army's General Personnel Directorate, advising that the Head of the Central Military Region had communicated that there was no documentation on the 77th Counter-subversive Base concerning the military personnel who were serving on the Cajatambo Counter-subversive Base in April 1991, as there was only a Personnel Log which did not indicate who were on the said Base, but merely the personnel who served in the said Unit on the date mentioned (evidence file, volume x, annex 80 to the State's answering brief, folio 4985); Note No. 969S-1-a/1-5/02.45.01 of April 30, 2007, issued by the Secretary General of the Ministry of Defense advising that no information was available on the military personnel who served on the Cajatambo Contra-subversive

investigations from obtaining relevant information: (a) to determine whether Mr. Osorio Rivera really entered the said Base; (b) to corroborate the conditions in which he remained there; (c) to compare versions concerning the alleged release, because it was carried out by a sergeant who has not been identified in the proceedings, and (d) to identify and prosecute the other persons who could have participated in the enforced disappearance of Jeremías Osorio Rivera. As this Court has indicated, the State authorities are obliged to collaborate in the gathering of evidence to achieve the objectives of the investigation, and to abstain from taking steps that imply obstructions to the progress of the investigative process.³²⁰ In addition, the State cannot hide behind the lack of evidence of the existence of the documents requested, but, to the contrary, must justify the refusal to provide them, proving that it has taken all available measures to verify that the information requested does not exist.³²¹ In this case, the State has not justified its refusal to provide the information requested or described the measures it took to obtain this information.

196. As established previously, the first oral proceeding concluded on December 17, 2008, with the delivery of the judgment by the National Criminal Chamber, deciding to acquit Lieutenant Tello Delgado of the charges he was accused of, considering that “the detention and transfer of the victim by the accused has been proved, as well as the fact that, to date, the latter has not been located, which constitutes suffering for his family members and which has evidently been affecting them for more than 17 years; however, there are serious doubts about the responsibility of the accused in the events of which he is accused; a doubt which is favorable to him in application of the constitutional principle of *in dubio pro reo*.”³²² This judgment was declared null, considering that the evidence had not been assessed properly (*supra* para. 96).

197. In the second oral proceeding Lieutenant Tello Delgado was again acquitted, because reasonable doubts existed about his responsibility.³²³ Regarding this judgment, it was decided that it was not null and “it was a clear case of doubt, in the face of the inculpatory and exculpatory evidence; in other words, a case of *in dubio pro reo*; so that the accused must be acquitted.”³²⁴ In this regard, the court described, on the one hand, the “indications of the perpetration of the offense,” namely: (1) it is not credible that the accused was unaware that the victim was considered a subversive; (2) the detention and release of Gudmer Tulio Zárate Osorio and another six individuals who had been detained, other than the victim; (3) that the accused did not provide the name of any of the members of the patrol on the date of the events, individuals who detained the victim and who, together with the accused, took him to Cajatambo, and (4) that the great distance between Cajatambo and the domicile of the victim was not taken into account, so that the victim, instead of going home would have gone to the home of his sister, Silvia Osorio, who lived a

Military Base (evidence file, volume x, annex 80 to the State’s answering brief, folio 4985); Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4720), and Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume VII, annex 14 to the brief with motions, arguments and evidence, folio 3615).

³²⁰ Cf. *Case of García Prieto et al. v. El Salvador*, *supra*, para. 112, and *Case of Gudiel Alvarez et al. (“Diario Militar”) v. Guatemala*, *supra*, para. 251.

³²¹ Cf. *Case of Gomes Lund et al. (Guerrilha Do Araguaia) v. Brazil. Preliminary objections, merits and reparations*. Judgment of November 24, 2010. Series C No. 219, para. 211, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 257.

³²² Judgment delivered by the National Criminal Chamber on December 17, 2008 (evidence file, volume IX, annex 20 to the State’s answering brief, folio 4750).

³²³ Cf. Judgment delivered by the National Criminal Chamber on November 4, 2011 (evidence file, volume IX, annex 12 to the State’s answering brief, folios 4506 to 4582).

³²⁴ Supreme final judgment R.N. No. 1071-2012 issued by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State’s final arguments, folios 5419 to 5434).

few meters from the main square in Cajatambo. On the other hand, it stated that “these factors alone do not prove with certainty that the accused ordered or executed actions that resulted in the disappearance of the victim; especially when there is evidence that proves his version of the facts,”³²⁵ without then assessing the evidence that supported the accused’s version of the events in relation to the “indications of the perpetration of the offense.”

198. In the instant case, the Court considers that the relationship is evident between, on the one hand, the application of the principle of *in dubio pro reo* and the argument of the lack of certainty about the authorship of the enforced disappearance that led to the acquittal of the only person accused and, on the other hand, the prolonged inactivity at certain periods of the investigation, as well as the lack of due diligence and the refusal to provide the information on the military personnel.

199. Based on all the foregoing, the Court concludes that this second investigation before the ordinary jurisdiction did not comply with the obligation of due diligence and thoroughness.

B.3. Reasonable time

200. The Court has indicated that investigations must be conducted within a reasonable time in order to clarify the facts and punish all those responsible for the violation of human rights.³²⁶ The Court has also stated that “the right of access to justice is not exhausted with the processing of domestic proceedings, but it must also ensure, within a reasonable time, the right of the presumed victims or their next of kin that all necessary measures are taken in order to discover the truth about what happened and to punish those eventually found responsible.”³²⁷

201. Regarding the guarantee of a reasonable time, the Court has established that four elements must be taken into consideration in order to establish whether the time is reasonable: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities,³²⁸ and (d) the effects that the delay in the proceeding may have on the legal situation of the victim.³²⁹

202. Regarding the first element, the Court has considered that the facts relating to a disappearance in a context of violence entail a certain complexity, taking into account that different degrees of responsibility exist at different levels;³³⁰ in other words, that they usually involve illegal acts committed by criminal structures and not by a single individual and this must be reflected in the investigations, as well as due to the refusal to provide information on the whereabouts of the victim supported by a supposed record of release. This assertion does not mean, however, that it is reasonable for the judicial authorities to deliver a final judgment 22 years after the initial complaint

³²⁵ Supreme final judgment R.N. No. 1071-2012 issued by the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic on April 17, 2013 (evidence file, volume XII, annexes to the brief with the State’s final arguments, folios 5419 to 5434).

³²⁶ Cf. *Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Luna López v. Honduras, supra*, para. 188.

³²⁷ *Case of 19 Tradesmen v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 188, and *Case of Luna López v. Honduras, supra*, para. 188.

³²⁸ Cf. *Case of Genie Lacayo v. Nicaragua, supra*, para. 77, and *Case of Luna López v. Honduras, supra*, para. 189.

³²⁹ Cf. *Case of Valle Jaramillo v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Luna López v. Honduras, supra*, para. 189.

³³⁰ Cf. *Case of Radilla Pacheco v. Mexico, supra*, para. 203, and *Case of Contreras et al. v. El Salvador, supra*, para. 150.

was filed. With regard to the second element, it has not been proved that the members of Jeremías Osorio Rivera's family have taken steps to halt the investigations. To the contrary, it has been established that, in addition to filing two complaints concerning the enforced disappearance of his brother, Porfirio Osorio Rivera played an active role as a civil party in all the domestic proceedings.³³¹ As regards the conduct of the judicial authorities, the Court observes that the excessive prolongation of the domestic proceedings was due exclusively to the conduct of the authorities responsible for heading the proceedings who failed to take all the measures required to ensure their progress *ex officio*.

203. Over and above the foregoing, the Court considers that the criminal proceedings, as a whole, have exceeded considerably the time that could be considered reasonable in order to conduct serious, diligent and exhaustive investigations into the facts relating to the enforced disappearance of Jeremías Osorio Rivera.

B.4. Failure to define the crime of enforced disappearance appropriately

204. The Court has already referred to the general obligation of the States to adapt their domestic laws to the American Convention.³³² This is also applicable in the case of the signature of the Inter-American Convention on Forced Disappearance of Persons, because it is derived from the customary norm according to which a State that has acceded to an international treaty must amend its domestic law as necessary in order to ensure the execution of the obligations assumed.³³³

³³¹ In the proceeding before the special jurisdiction, the jurisdictional organ assessed the evidence inappropriately, and this caused the Transitory Criminal Chamber of the Supreme Court of Justice of the Republic to annul the judgment of December 17, 2008, and to order that a new oral proceeding be held, which concluded on November 4, 2011, with the acquittal of the accused. The victim's family members, as civil party, filed an appeal for annulment and, pursuant to domestic law, had 10 days to provide the grounds for this. On December 13, 2011, the lawyers of the members of Jeremías Osorio Rivera's family requested a copy of the judgment of November 4, 2011, in order to provide the grounds for the said appeal. Owing to the absence of a reply, on February 1, 2012, they repeated their request and indicated that they had not been notified of the decision recording the filing of the appeal and the requirement to provide the grounds. However, once again the National Criminal Chamber did not respond to this request. Consequently, the defense counsel of the members of Jeremías Osorio Rivera's family filed a complaint before the Office for Judicial Supervision on February 16, 2012, which was admitted for processing and, on August 21, 2013, decided favorably. On March 26, 2012, the Chamber's decision was notified granting the appeal for annulment and a copy of the judgment was forwarded. On April 11, 2012, the grounds for the appeal were provided. However, the representatives noted that the file of the Osorio Rivera case had been forwarded to the Supreme Court on March 30, 2012, without the required substantiation. *Cf.* Brief filed before the National Criminal Chamber on December 13, 2011 (evidence file, volume VIII, annex 25 to the brief with motions, arguments and evidence, folio 4181); Brief filed before the National Criminal Chamber on February 1, 2012 (evidence file, volume VIII, annex 27 to the brief with motions, arguments and evidence, folio 4186); Brief filed before the Judiciary's Office for Judicial Supervision on February 16, 2012 (evidence file, volume VIII, annex 28 to the brief with motions, arguments and evidence, folios 4187 to 4189); Decision No. 01 issued by Office for Judicial Supervision on March 12, 2012 (evidence file, volume VIII, annex 29 to the brief with motions, arguments and evidence, folios 4196 and 4197); Record of notification on March 2, 2012, of the decision of November 21, 2011 (evidence file, volume VIII, annex 31 to the brief with motions, arguments and evidence, folio 4202); Brief substantiating the appeal filed on April 11, 2012 (evidence file, volume VIII, annex 33 to the brief with motions, arguments and evidence, folios 4205 to 4225); Brief filed before the Judiciary's Office for Judicial Supervision on July 6, 2012 (evidence file, volume VIII, annex 30 to the brief with motions, arguments and evidence, folios 4198 to 4201), and Decision of the Head of the 16th Unit of the Office for Judicial Supervision of August 21, 2013 (evidence file, volume XII, annexes to the representatives' final arguments, folios 5452 to 5466).

³³² In the American Convention this principle is contained in its Article 2, which establishes the general obligation of each State party to adapt its domestic law to the provisions of this instrument, in order to guarantee the rights recognized therein, which means that the provisions of domestic law must be effective (principle of the *effet utile*). *Case of Heliodoro Portugal v. Panama*, *supra*, para. 179. This obligation entails the adoption of measures of two types: on the one hand, the elimination of norms and practices of any kind that entail the violation of the guarantees established in the Convention and, on the other, the enactment of norms and the implementation of practices leading to the effective observance of the said guarantees. *Cf. Case of La Cantuta v. Peru*, *supra*, para. 172, and *Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations*. Judgment of May 14, 2013. Series C No. 260, para. 293.

³³³ *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, para. 193.

205. The above means that States must define enforced disappearance as an autonomous offense and also define the wrongful conducts of which it is composed.³³⁴ This legal definition must be made taking into consideration Article II of the said Convention, which outlines the elements that the definition of this offense in domestic law should contain. The article in question stipulates that enforced 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 liberty or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

206. In the *Gómez Palomino* case, this Court referred to the failure to adapt article 320 of the Peruvian Criminal Code³³⁵ to international standards because: (a) article 320 of the Peruvian Criminal Code restricted the authorship of enforced disappearance to “public officials or servants.” This definition does not contain all the forms of criminal participation that are included in Article II of the Inter-American Convention on Forced Disappearance of Persons, and is thus incomplete;³³⁶ (b) the refusal to acknowledge the deprivation of liberty and to provide information on the fate or whereabouts of the person in order not leave traces or evidence should be included in the definition of the offense, because this allows it to be distinguished from other offenses, with which it is usually related; however, article 320 of the Peruvian Criminal Code does not include this;³³⁷ (c) the wording of article 320 of the Criminal Code indicates that the disappearance must be “duly proven,” and this gives rise to serious difficulties in its interpretation. First, it is not possible to know whether it should be duly proved before the offense is reported and, second, it is not clear who should execute the verification.³³⁸ The latter “does not allow the State to comply fully with its international obligations.”³³⁹

207. Regarding the allegations concerning plenary decision 09-2009/CJ-116 of the Supreme Court of Justice of the Republic of Peru of November 13, 2009, the Inter-American Court has already had the occasion to rule on this in the order on monitoring compliance with the judgment of July 5, 2011, in the *case of Gómez Palomino*, when it indicated that this decision does not comply with the obligation to amend domestic criminal law.³⁴⁰ The Court recalls that “the enforced disappearance remains unchanged until the victim’s fate or whereabouts has been established, regardless of the modifications in the author’s status as a ‘public servant.’”³⁴¹ In cases such as this one in which the victim has been disappeared for 22 years, it is reasonable to suppose that the status required of the perpetrator may vary with the passage of time. In this regard, if the

³³⁴ Cf. *Case of Heliodoro Portugal v. Panama*, *supra*, para. 181, and *Case of Case of Anzaldo Castro v. Peru. Preliminary objection, merits, reparations and costs*, *supra*, para. 165.

³³⁵ Proven disappearance. Article 320. The public official or servant who deprives a person of his liberty, ordering or executing actions that result in his duly proven disappearance, shall be punished by imprisonment for no less than fifteen years and ineligibility to exercise civil rights, pursuant to paragraphs (1) and (2) of article 36.

³³⁶ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 102.

³³⁷ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 104.

³³⁸ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 105.

³³⁹ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 108.

³⁴⁰ Cf. *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order issued by the Inter-American Court on July 5, 2011, considering paragraph 36.

³⁴¹ *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order issued by the Inter-American Court on July 5, 2011, para. 36, citing *Case of Radilla Pacheco v. Mexico*, *supra*, para. 240.

interpretation contained in the said plenary decision is accepted, it would contribute to impunity. Thus, in order to meet the minimum requirements of the correct definition of the offense, the condition of “agent of the State” must be established as broadly as possible.³⁴²

208. Indeed, the intention of the said plenary decision that, “even though the disappearance of the victim subsists when the law defining the offense of enforced disappearance of persons enters into force, because it refers to a special and specific offense – it can only be committed by public officials or servants – it is essential that this official status is present when the criminal law enters into force,”³⁴³ runs counter to what this Court has indicated. The Court agrees with the representatives’ argument that the plenary decision created a loophole for impunity with regard to events that had occurred before the date on which the crime of enforced disappearance was incorporated into Peruvian law because, according to this decision, it was essential that, at that time, the accused was still a public official.

209. In addition, the plenary decision being examined sought to correct the limitation in the definition of the offense contained in article 320 of the Criminal Code consisting in requiring that the disappearance be “duly proven.” To this end, it proposed that this expression should be understood as: “not providing information on a person who cannot be found in the places that he normally or reasonably should be – unawareness of where he is; which is constituted when this element is present: namely, the information is not provided which the law indicates is compulsory on the whereabouts or legal status of the victim, and this must have, as a presumption or as an initial action incorporated into the legal definition, the deprivation of liberty of the individual who is a victim of the action defined by law.”³⁴⁴ In principle, this is a positive measure; nevertheless, the State has noted that the plenary decision provides parameters for judicial interpretation. This signifies, according to article 22 of the Organic Law of the Peruvian Judiciary that the judge may diverge from this case law by a reasoned decision. The introduction of jurisdictional discretionality regarding the meaning of the expression “duly proven” is incompatible with the Convention, which has indicated with extreme clarity that “enforced disappearance is characterized by its clandestine nature, which requires the State, in good faith compliance with its international obligations, to provide the necessary information, because it is the State that controls the means of clarifying events that occurred on its territory. Therefore, any attempt to place the burden of proof on the victims or their next of kin deviates from the State’s obligation indicated in Article 2 of the American Convention and Articles I(b) and II of the Inter-American Convention on Forced Disappearance [of Persons].”³⁴⁵

210. Another element that could represent a problem in the said plenary decision is the assertion that “since the offense of enforced disappearance is a permanent offense, it has special characteristics in relation to the application of criminal law over time. Its start is not the deprivation of liberty, but rather the moment at which there is non-compliance with the mandate to provide information.”³⁴⁶ This assertion does not make it clear whether this means that there is no offense until the moment when a request for information is presented with regard to the person who is presumed to be detained and this is refused. In the *case of Heliodoro Portugal*, this Court

³⁴² Cf. *Case of Radilla Pacheco v. Mexico*, *supra*, para. 321.

³⁴³ Finding 15(C), of Plenary Decision No. 9-2009/CJ-116 of November 13, 2009 (evidence file, volume VIII, annex 40 to the brief with motions, arguments and evidence, folio 4363).

³⁴⁴ Finding 10 of Plenary Decision No. 9-2009/CJ-116 of November 13, 2009 (evidence file, volume VIII, annex 40 to the brief with motions, arguments and evidence, folio 4358).

³⁴⁵ *Case of Gómez Palomino v. Peru. Merits, reparations and costs*, *supra*, para. 106.

³⁴⁶ Finding 15 of Plenary Decision No. 9-2009/CJ-116 of November 13, 2009 (evidence file, volume VIII, annex 40 to the brief with motions, arguments and evidence, folio 4362).

considered that article 150 of the Panamanian Criminal Code was contrary to the Convention, because "it appears to be applicable only when there is a 'refusal to provide' information on the whereabouts of someone whose deprivation of liberty is already a fact and it is known with certainty that someone has truly been deprived of their liberty."³⁴⁷ In this regard, the Court considered that "[t]his definition of the offense does not contemplate the possibility of a situation in which it is not known with certainty whether the disappeared person is or was detained: in other words, it does not include situations in which it is not acknowledged that someone has been deprived of their liberty, even when the whereabouts of the said persons is unknown. It is precisely that failure to acknowledge the deprivation of liberty which, on many occasions, endangers other fundamental rights of the disappeared person."³⁴⁸

211. Regarding the applicability of article 320 of the Criminal Code to the specific case, the Court notes that this was one of the definitions of an offense that was considered by the Fourth Supraprovincial Court and by the National Criminal Chamber during the criminal proceedings held in the ordinary criminal jurisdiction starting in 2004, and the definition of the offense for which Lieutenant Tello Delgado was prosecuted and of which he was acquitted in the judgment of December 17, 2008 (*supra* para. 95). The latter was annulled based on inappropriate assessment of the evidence on June 24, 2010 (*supra* para. 96). During the new trial that culminated in the judgment delivered in 2011, the accused was also acquitted of the offense defined in article 320 of the Criminal Code (*supra* para. 97). However, the Court considers that no specific relationship has been revealed between the lack of effectiveness, diligence and thoroughness in the investigations and the failure to adapt the definition of the offense of enforced disappearance to the parameters of the Convention. Moreover, the representatives, in their motions and arguments brief, indicated that "the failure to adapt article 320 of the Peruvian Criminal Code to international standards has not had consequences in the processing of the investigation." In addition, none of the rulings reveal that the prosecutors reversed the burden of proof onto the complainants owing to this incorrect definition. Thus, the Court does not observe, and the representative do not maintain, that in the case *sub judice* this incorrect definition of the offense has been a specific factor in obstructing the implementation of the investigations and the proceedings opened into the enforced disappearance of Jeremías Osorio Rivera.

212. Nevertheless, the Court recalls that, while article 320 of the Criminal Code is not adapted correctly to international standards, the State continues to fail to comply with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.³⁴⁹

B.5. The amnesty laws

213. With regard to the general obligation of the States to adapt their domestic law to the Convention, contained in Article 2 of the American Convention,³⁵⁰ for the effects of this dispute, it

³⁴⁷ *Case of Heliodoro Portugal v. Panama, supra*, para. 199.

³⁴⁸ *Case of Heliodoro Portugal v. Panama, supra*, para. 199.

³⁴⁹ *Cf. Case of Gómez Palomino v. Peru. Monitoring compliance with judgment.* Order issued by the Inter-American Court on July 1, 2009, considering paragraph 32; *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment.* Order issued by the Inter-American Court on July 5, 2011, considering paragraphs 36 and 37, and *Case of Anzualdo Castro v. Peru. Monitoring compliance with judgment.* Order issued by the Inter-American Court on August 21, 2013, considering paragraphs 23 to 26.

³⁵⁰ Article 2 establishes that: "[w]here 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."

should be recalled that the Court has already analyzed the content and scope of amnesty laws Nos. 26,479 and No. 26,492 in the *case of Barrios Altos v. Peru* and, in the judgment on merits in that case of March 14, 2001, it declared that they were incompatible with the American Convention and, consequently, they lacked legal effects.³⁵¹ The Court interpreted that judgment on merits in the sense that “[t]he promulgation of a law that is manifestly contrary to the obligations assumed by a State Party to the Convention constitutes *per se* a violation of the latter and gives rise to the international responsibility of the State [and] that, given the nature of the violation constituted by amnesty laws Nos. 26,479 and No. 26,492, the decisions in the judgment on merits in the Barrios Altos case have general effects.”³⁵² In the judgment on reparations in the *case of Barrios Altos*, of November 30, 2001, the Court ordered the State to apply the decision of the Court in the judgment on interpretation of the judgment on merits “with regard to the meaning and scope of the declaration of the ineffectiveness of Laws Nos. 26,479 and 26,492”;³⁵³ in other words, to accord general effects to the decisions in the judgment on merits.

214. The incompatibility *ab initio* of the amnesty laws with the Convention has been accepted in general in Peru since the Court declared this in the judgment in the *case of Barrios Altos*; that is, since March 14, 2001.³⁵⁴ In addition, in some cases the State has eliminated the effects that these laws might have had at one time.

215. In the Order on monitoring compliance with judgment of September 22, 2005, this Court declared that, pursuant to the ninth considering paragraph of this order, the State had complied fully with “the application of the decisions taken by the Court in its judgment on interpretation of the judgment on merits in this case of September 2, 2001, in relation to the meaning and scope of the declaration of the ineffectiveness of Laws Nos. 26,479 and 26,492 (operative paragraph 5(a)) of the judgment on reparations of November 30, 2001.”³⁵⁵ To this end, it took into account that, on April 8, 2005, the judgment of March 14, 2001, had been published in the official gazette “*El Peruano*,” and also the decision of the Prosecutor General of April 18, 2005.

216. Bearing in mind the above and based on the period of time over which the said laws were applied, it can be inferred that, of the investigations analyzed, the only one on which the said laws could have had an impact would be the one conducted by the Third Permanent Military Court of Lima in which the archiving of the case was decided on February 7, 1996 (*supra* para. 89). The case was archived on October 15, 1996, with the favorable opinion of the Judge-Advocate of the Permanent War Council of the Army’s Second Judicial Zone (*supra* para. 89). In this regard, both the representatives and the Commission stated that the archiving of the proceedings before the military jurisdiction was not a result of the entry into force and application of Laws Nos. 26,479 and 26,492. This assertion is correct.

217. Despite the foregoing, it should be recalled that, in the context in which the facts occurred, those laws constituted a general obstacle to the investigations of gross human rights violations in Peru. Thus, this Court has already declared in the cases of *La Cantuta v. Peru and Anzualdo Castro v. Peru* that, during the period in which the amnesty laws were applied, the State failed to comply

³⁵¹ Cf. *Case of Barrios Altos v. Peru. Merits, supra*, para. 44 and fourth operative paragraph.

³⁵² *Case of Barrios Altos v. Peru. Interpretation of the judgment on merits, supra*, para. 18 and second operative paragraph.

³⁵³ *Case of Barrios Altos v. Peru. Reparations and costs. Judgment of November 30, 2001. Series C No. 87, fifth operative paragraph, subparagraph (a).*

³⁵⁴ Cf. *Case of La Cantuta v. Peru, supra*, para. 187.

³⁵⁵ *Case of Barrios Altos v. Peru. Monitoring compliance with judgment. Order issued by the Inter-American Court on September 22, 2005, first declarative paragraph.*

with its obligation to adapt its domestic law to the Convention contained in Article 2 of this instrument, so that, since they were *ab initio* and in general incompatible with the Convention, the said “laws” could not generate effects, do not have any effect currently, and cannot have effects in the future.³⁵⁶

C. Conclusion

218. Based on the previous considerations, the Court concludes that the State violated the guarantee of the ordinary judge with regard to the investigation of the enforced disappearance of Jeremías Osorio Rivera before the military jurisdiction, so that Peru is responsible for the violation of Article 8(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Jeremías Osorio Rivera and his family members: Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán, Jersy Jeremías Osorio Gaitán, Juana Rivera Lozano, Epifanía Alejandrina Osorio Rivera, Elena Máxima Osorio Rivera, Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Mario Osorio Rivera and Efraín Osorio Rivera.

219. In addition, the Court concludes that the investigations conducted in the ordinary jurisdiction were neither diligent nor effective to determine the whereabouts of Mr. Osorio Rivera, to establish what happened, and to identify and punish those responsible; moreover they failed to respect the guarantee of a reasonable time. Consequently, the Court concludes that, owing to the absence of an effective investigation of the facts, and the prosecution and punishment of those responsible, the State violated the right to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) of this instrument and I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Jeremías Osorio Rivera and his family members: Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán, Jersy Jeremías Osorio Gaitán, Juana Rivera Lozano, Epifanía Alejandrina Osorio Rivera, Elena Máxima Osorio Rivera, Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Mario Osorio Rivera and Efraín Osorio Rivera.

220. Even though more than 22 years have elapsed since the enforced disappearance of Mr. Osorio Rivera neither the truth about the events nor his whereabouts are known. Consequently, in this case, the State has still not satisfied the right of the family members to know the truth, which is subsumed in the right of the victim or his family members to obtain clarification of the violations and the corresponding responsibilities from the competent organs of the State, by the investigation and prosecution established in Articles 8 and 25(1) of the Convention.³⁵⁷

221. Lastly, with regard to the existing normative framework, the Court concludes that during the period in which the amnesty laws were applied, the State failed to comply with its obligation to adapt its domestic law to the Convention and that, while article 320 of the Peruvian Criminal Code is not adapted to the proper definition of the offense in keeping with the international parameters, the State continues to be in non-compliance with Articles 2 of the American Convention and III of the Inter-American Convention on Forced Disappearance of Persons.

³⁵⁶ Cf. *Case of La Cantuta v. Peru*, *supra*, para. 189, and *Case of Anzualdo Castro v. Peru*. *Preliminary objection, merits, reparations and costs*, *supra*, para. 103.

³⁵⁷ Cf. *Case of Chitay Nech et al. v. Guatemala*. *Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 206, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 263.

VII-3
RIGHT TO PERSONAL INTEGRITY, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE THE RIGHTS, TO THE DETRIMENT OF THE MEMBERS OF JEREMÍAS OSORIO RIVERA'S FAMILY

222. In this chapter the Court will set out the arguments of the parties and of the Inter-American Commission, and will then rule on the merits of the matter in relation to the alleged violations of Article 5 of the American Convention, to the detriment of the family members.

A. Arguments of the parties and of the Commission

223. The Commission affirmed that it can be presumed that the personal integrity of the next of kin of a victim of enforced disappearance has been violated. It also argued that the absence of effective remedies had constituted a source of additional suffering and anguish for the members of Jeremías Osorio Rivera's family. Furthermore, it indicated that the members of Jeremías Osorio Rivera's family had taken innumerable steps to obtain his release or information on his situation. Similarly, his siblings, mother and permanent companion had filed complaints before the judicial authorities and had testified before the respective criminal proceedings. It also noted that, when Jeremías Osorio Rivera was forcibly disappeared by members of the Peruvian Army at the beginning of 1991, his earnings represented the main source of income of his permanent companion, mother and underage children. In this regard, it indicated that, according to the conclusions reached by the CVR, the scourge of political violence unleashed by the insurgent groups and extended by the security forces involved individuals who, as Jeremías Osorio Rivera and his family, lived in rural areas far from the center of political and economic power and who, historically, had suffered from the highest poverty levels in the country. Thus, the alleged suffering undergone by the presumed victims was representative of the perverse relationship that existed between social exclusion, discrimination of the marginalized segments of the Peruvian population, and the increased probability that they would be beset by the excesses committed by the illegal armed groups and the abuses of the forces of law and order. Consequently, the Commission stated that, in this case, the right to personal integrity of the following members of Jeremías Osorio Rivera's family had been violated: Juana Rivera Lozano (mother), Epifanía Alejandrina, Elena Máxima, Porfirio, Adelaida, Silvia, Mario and Efraín Osorio Rivera (siblings), Santa Fe Gaitán Calderón (permanent companion), Edith Laritza Osorio Gaytán, Neida Rocío, Vannesa Judith and Jersey Jeremías, all with the surnames Osorio Gaitán (children).

224. The representatives asserted that, as indicated during the investigation conducted at the domestic level, Juana Rivera Lozano, Santa Fe Gaitán Calderón and Porfirio Osorio Rivera had taken the required steps when confronted by the detention of Jeremías Osorio Rivera before the State agents responsible for the alleged facts. They had also filed the corresponding legal actions against those State agents, but still do not know the whereabouts of the presumed victim. In addition, Juana Rivera Lozano and Porfirio Osorio Rivera had informed the CVR of the aftereffects of the detention and subsequent disappearance of Jeremías Osorio Rivera. For her part, Santa Fe Gaitán Calderón had to raise the four children she had with the presumed victim alone. The representatives indicated that Juana Rivera Lozano had died of a painful illness, knowing that the alleged disappearance of her son was still unpunished. Similarly, other siblings of Jeremías Osorio Rivera, such as Silvia Osorio Rivera, had accompanied his brother, Porfirio, following the presumed victim's detention. The said family members, together with other siblings of Jeremías Osorio, have been taking part in and attending the public hearings of the criminal proceeding, as witnesses or as part of the public, which resulted in the acquittal of one of those presumably responsible. The representatives also asserted that the alleged violation of the right to mental and moral integrity of the next of kin of Jeremías Osorio Rivera had been the direct result of his alleged enforced disappearance, of the uncertainty that they had experienced and would experience with regard to

what happened to the presumed victim and, also, of the alleged impunity surrounding the enforced disappearance of Jeremías Osorio Rivera, which was a result of the absence of the prosecution and punishment of all the masterminds and perpetrators of the facts. Based on these considerations, the representatives concluded that the State had violated Article 5 of the American Convention, in relation to Article 1(1) of this international instrument to the detriment of the closest members of Jeremías Osorio Rivera's family.

225. During the public hearing, the representatives argued that it had been proved that the lives and mental well-being of the next of kin of Jeremías Osorio Rivera had been affected by experiencing not only the disappearance of the victim, but also owing to the insufficient measures taken by the State to provide an unequivocal response that allowed the truth of the facts to be known, and especially, with regard to the discovery of the victim and the punishment of those responsible. The closeness of the relationship with the victim is an important factor in order to determine the impact of the events on the family members, together with their exposure to the violent act, their age, the type of personality, the kind of relationship the person had with the victim, and the system of emotional support relationships, among them. The representatives asserted that, in this case, the victim's direct relationship had been proved with his permanent companion, his children who were minors at the time, and his mother, for all of whom he was the main source of support. They also argued that the disappearance had a serious impact on his siblings, because he was one of the youngest ones, and they have remained in uncertainty as a result of the impossibility of obtaining closure to a mourning process because they do not know the final resting place of the victim, and because of the impunity surrounding the facts. Furthermore, the representatives of the victim stated that the disappearance of Jeremías Osorio Rivera had also resulted in some of his family members being unable to conclude their elementary studies or undertake either vocational or university studies.

226. The State considered it probable that some of the suffering of the members of Mr. Osorio Rivera's family was similar to that of next of kin of victims of enforced disappearance involving the State's international responsibility, which had not been proved in this case. Thus, the State did not deny the existence of the harm to the right to integrity of the next of kin of Mr. Osorio Rivera owing to the presumed disappearance of their family member during all this time, but since the State's international responsibility for the enforced disappearance had not been proved, the State was not obliged to make reparation to the family members. Furthermore, the State argued that it had conducted investigations into the events denounced; therefore, it indicated that it could not be considered responsible for the violation of the right to integrity of the next of kin. The State indicated that, at the domestic level, owing to an administrative proceeding, the next of kin of Mr. Osorio Rivera were included on the Unified Register of Victims and may be considered beneficiaries of the different reparation programs established by the High-level Multisectoral Commission responsible for monitoring the State's actions and policies in the spheres of peace, collective reparation and national reconciliation. In conclusion, the State asked the Court to declare that the State was not responsible for the violation of the right to personal integrity contained in Article 5 of the American Convention, with regard to the members of Mr. Osorio Rivera's family. In its final written arguments, the State argued, based on the supreme final judgment of April 17, 2013, that it considered that the mistreatment alleged by the Inter-American Commission and the representatives had not been proved, and that it had not violated the said article to the detriment of the next of kin of Jeremías Osorio Rivera.

B. Considerations of the Court

227. This Court has considered that, in cases involving the alleged enforced disappearance of persons, it is possible to understand that the violation of the right of the victims' next of kin to mental and moral integrity is a direct result of this phenomenon, which causes them severe

suffering owing to the act itself, and 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 conduct an effective investigation to clarify what happened.³⁵⁸ This allows it to be presumed that the mental and moral integrity of the family members is harmed.³⁵⁹ In previous cases, the Court has established that this presumption is established *juris tantum* as regards mothers and fathers, children, spouses, and permanent companions, provided that this is in keeping with the specific circumstances of the case.³⁶⁰ However, in a recent judgment involving an enforced disappearance, it considered that this presumption is also applicable to the siblings of the disappeared victims, unless the specific circumstances of the case reveal otherwise.³⁶¹

228. On previous occasions, the Court has considered that the right to mental and moral integrity of the next of kin of the victims has been violated owing to the additional suffering that they have undergone as a result of the particular circumstances corresponding to the violations perpetrated against their loved ones and because of the subsequent acts or omissions of the State authorities in relation to these facts.³⁶² In addition, the Court recalls that it has considered that the constant refusal of the State authorities to provide information on the whereabouts of the victims or to open an effective investigation to clarify what happened increases the suffering of the family members.³⁶³

229. The Court recognizes that the mother, the permanent companion and some of the siblings of Jeremías Osorio Rivera devoted time to trying to obtain information on the detention situation of the presumed victim and, subsequently, with regard to his whereabouts.³⁶⁴ On receiving information on the supposed release, without being able to locate Mr. Osorio Rivera, they insisted and obtained imprecise information (*supra* para. 157) and judicial proceedings that did not allow the family members to know the truth of what happened to the victim and his whereabouts (*supra* para. 220). In this regard, the Court takes into account his mother, his permanent companion, his children and his siblings as the members of the victim's family.

230. The affidavits prepared by the members of Jeremías Osorio Rivera's family included similar references to the aftereffects of the alleged disappearance on their lives, including frustration because of the duration of the proceedings, physical ailments, changes in some life projects, depression, irritability, confusion, accompanied by a situation of limited financial resources.³⁶⁵ Furthermore, an expert appraisal by Carlos Alberto Jibaja Zárate reveals the impact on the next of kin of Jeremías Osorio Rivera of the alleged violations of their human rights – in particular, owing

³⁵⁸ Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of García and family members v. Guatemala, supra*, para. 161.

³⁵⁹ Cf. *Case of Valle Jaramillo et al. v. Colombia, supra*, para. 119, and *Case of García and family members v. Guatemala, supra*, para. 161.

³⁶⁰ Cf. *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of García and family members v. Guatemala, supra*, para. 161.

³⁶¹ Cf. *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 286.

³⁶² Cf. *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 137.

³⁶³ Cf. *Case of Blake v. Guatemala. Merits, supra*, para. 114, and *Case of Torres Millacura v. Argentina, supra*, para. 142.

³⁶⁴ Cf. Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folio 5305); Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folio 5311), and Statement made by Porfirio Osorio Rivera before the Inter-American Court during the public hearing on August 29, 2013.

³⁶⁵ Cf. Affidavits prepared by Santa Fe Gaitán Calderón, Silvia Osorio Rivera, Edith Laritza Osorio Gaytán and Aquiles Román Atencio on August 14 and 15, 2013 (evidence file, volume XI, affidavits, folios 5303 to 5325).

to the enforced disappearance of the presumed victim and the lack of access to justice – as well as the emotional harm they suffered as a result of the alleged violations. This expert appraisal evaluated Santa Fe Gaitán Calderón (permanent companion), Edith Laritza Osorio Gaytán (daughter), Neida Osorio Gaitán (daughter) and Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Elena Máxima Osorio Rivera and Mario Osorio Rivera (siblings). However, the State disputed some of the conclusions in its final arguments.

231. Based on the affidavits and the expert report of Carlos Alberto Jibaja Zárate, and taking into account the State's observations, the Court considers that the personal integrity of the family members was affected in one way or another by one or several of the following circumstances:³⁶⁶ (i) they have been involved in different actions such as the search for justice or for information on his whereabouts; (ii) the disappearance of their loved one has had personal, physical and emotional repercussions; (iii) the facts have affected their social relationships, fragmented the family dynamics, and caused different degrees of depression and continuous feelings of victimization; (iv) the effects on them have been increased by the impunity surrounding the facts; (v) the life project of his immediate family unit and that of his brother, Porfirio Osorio Rivera, were curtailed, and (vi) the failure to clarify what happened to their loved one has kept alive the hope of finding him, or the failure to find him and identify his remains has prevented them from giving him a decent burial in keeping with their beliefs, altering the mourning process, and perpetuating the suffering and uncertainty. Consequently, the Court finds that it has been proved that, as a direct result of the disappearance, the members of Jeremías Osorio Rivera's family have undergone profound suffering, anxiety and anguish, which has harmed their mental and moral integrity.

232. The expert appraisal did not include all the siblings or all the children of Jeremías Osorio Rivera. However, it can be inferred that the situation of all of them was similar, so that the consequences and harm would be similar or the same. Accordingly, the Court finds that all the persons presented as members of Jeremías Osorio Rivera's family suffered some type of personal, physical and/or emotional repercussion owing to the facts themselves, and the lack of a subsequent investigation and answers.

233. Regarding the State's argument that it was not responsible for the disappearance of Jeremías Osorio Rivera and, therefore, did not owe any reparation to his next of kin, the Court has already established that, as indicated previously (*supra* paras. 159, 167 to 171 and 218 to 221), the international responsibility of the State has been constituted. Thus, it considers that the acts and omissions of the State directly affected the members of Jeremías Osorio Rivera's family.

234. Consequently, the Court concludes that the State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the following members of Jeremías Osorio Rivera's family: his permanent companion, Santa Fe Gaitán Calderón; his children, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán; his mother, Juana Rivera Lozano; and his siblings, Epifanía Alejandrina, Elena Máxima, Porfirio, Adelaida, Silvia, Mario and Efraín, all with the surnames Osorio Rivera.

³⁶⁶ Cf. Report of the psychological evaluations performed by Carlos Alberto Jibaja Zárate on August 15, 2013 (evidence file, volume XI, affidavits, folios 5326 to 5388). See also: Affidavit prepared by Santa Fe Gaitán Calderón on August 14, 2013 (evidence file, volume XI, affidavits, folios 5303 to 5307); Affidavit prepared by Silvia Osorio Rivera on August 15, 2013 (evidence file, volume XI, affidavits, folios 5308 to 5313); Affidavit prepared by Edith Laritza Osorio Gaytán on August 14, 2013 (evidence file, volume XI, affidavits, folios 5315 to 5318), and Affidavit prepared by Aquiles Román Atencio on August 14, 2013 (evidence file, volume XI, affidavits, folios 5319 to 5325).

VIII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

235. Based on the provisions of Article 63(1) of the American Convention,³⁶⁷ the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.³⁶⁸

236. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the reinstatement of the previous situation. When this is not feasible, as in most cases of human rights violations, the Court will establish measures to ensure the rights that have been violated and to repair the consequences of the violations.³⁶⁹ Accordingly, the Court has found it necessary to grant different measures of reparation, in order to redress the harm integrally, so that, in addition to pecuniary compensation, measures of restitution, rehabilitation, and satisfaction, and guarantees of non-repetition are especially relevant for the damage caused.³⁷⁰

237. The Court has established that the reparations must have a causal nexus to the facts of the case, the violations declared, the harm verified, and the measures requested to redress the respective harm, and it must take these factors into consideration in order to rule appropriately and in accordance with law.³⁷¹

238. In view of the violation of the Convention declared in the preceding chapters, the Court will proceed to examine the claims submitted by the Commission and the representatives, in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to establish measures addressed at providing redress for the harm caused to the victims.³⁷²

A. Injured party

239. The injured party, pursuant to Article 63(1) of the Convention, is considered to be the person declared a victim of the violation of any right recognized in this instrument. Therefore, this Court considers that the “injured party” is: Jeremías Osorio Rivera, Juana Rivera Lozano, Epifanía Alejandrina Osorio Rivera, Elena Máxima Osorio Rivera, Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Mario Osorio Rivera, Efraín Osorio Rivera, Santa Fe Gaitán Calderón,

³⁶⁷ Article 63(1) of the Convention stipulates that: “[i]f 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.”

³⁶⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Luna López v. Honduras, supra*, para. 213.

³⁶⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 26, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 244.

³⁷⁰ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 244.

³⁷¹ Cf. *Case of Ticona Estrada v. Bolivia, supra*, para. 110, and *Case of Luna López v. Honduras, supra*, para. 215.

³⁷² Cf. *Case of Velásquez Rodríguez. Reparations and costs, supra*, paras. 25 to 27, and *Case of Luna López v. Honduras, supra*, para. 214.

Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán,³⁷³ Vannesa Judith Osorio Gaitán³⁷⁴ and Jersey Jeremías Osorio Gaitán,³⁷⁵ and, as victims of the violations declared in this Judgment, they will be considered beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate the facts and to identify, prosecute and punish those responsible, as appropriate, and also to determine the whereabouts of the victim

1. Investigation, identification, prosecution and punishment, as appropriate, of all those responsible

240. The Commission asked that the domestic proceedings for the human rights violations declared in its Merits report be pursued, as well as the criminal proceedings for the offense of enforced disappearance with regard to Jeremías Osorio Rivera, in an impartial and effective manner and within a reasonable time, in order to clarify the facts fully, identify all those responsible, and impose the corresponding penalties.

241. The representatives asked the Court to order Peru to conduct, within a reasonable time, a complete, impartial and effective investigation in order to identify, prosecute and punish all the masterminds and perpetrators, their accomplices and accessories, of the violations of the victims' human rights with sentences proportionate to the severity of the acts committed against Jeremías Osorio Rivera. In their final written arguments, the representatives asked the Court to require the State to "order the corresponding institutions to collaborate by providing real, specific and adequate information on the identification, functions, positions, personnel records, and all relevant documentation that leads to the real identification of each and every one of those responsible, without alleging that it does not have this owing to the time that has passed." They added that they considered it desirable that the Court rule on the specific obligation of the States Parties to the Convention to investigate and to punish crimes against humanity, and especially enforced disappearance. They indicated that the results of the investigations should be publicized widely. They also asked the Court to order the State of Peru to abstain from using procedural obstacles such as the statute of limitations, *res judicata*, or any other mechanism aimed at excluding the responsibility of those who may have taken part in the facts. In particular, they asserted that the State must overcome the obstacle of *res judicata*, "because due diligence has been violated in this case which has resulted in the impunity of the acts, and this has constituted a fraudulent proceeding, so that a supposed violation of the right of *ne bis in idem* cannot be alleged."

242. The State indicated that the judgment handed down on April 17, 2013, constituted *res judicata* with regard to the person prosecuted in the domestic courts; that, in the instant case, the Public Prosecution Service and the representatives considered that he was the direct perpetrator of

³⁷³ Cf. Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1681), and National identity care (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4412). She also appears as "Neyda Rocío Osorio Gaitán." Cf. Birth certificate issued by the provincial municipality of Oyón on January 5, 1986 (evidence file, volume IV, annex 21 to the submission of the case, folio 1677).

³⁷⁴ Cf. Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1682), and She also appears as "Vanezza Yudit Osorio Gaitán." Cf. Birth certificate issued by the provincial municipality of Oyón on May 12, 1989 (evidence file, volume IV, annex 21 to the submission of the case, folio 1678).

³⁷⁵ Cf. Birth certificate (re-registration D.L No. 26242) issued by the Gorgor district municipality (evidence file, volume IV, annex 21 to the submission of the case, folio 1680), and National identity care (evidence file, volume VIII, annex 44 to the brief with motions, arguments and evidence, folio 4414). He also appears as "Jeremías Salas Osorio Gaitán." Cf. Birth certificate issued by the provincial municipality of Oyón on January 30, 1991 (evidence file, volume IV, annex 21 to the submission of the case, folio 1679).

the presumed enforced disappearance of Jeremías Osorio Rivera. In this regard, it maintained that the duly reasoned decision was in keeping with the standards and guidelines of the case law of the Inter-American Court, which, with regard to the presumption of innocence recognized in Article 8(2) of the Convention, requires that a person cannot be convicted unless there is absolute proof of his criminal responsibility, and if this is incomplete or insufficient, it is not admissible to convict him, but rather he must be acquitted.

243. In this Judgment, the Court has declared, *inter alia*, that the investigations conducted by the ordinary jurisdiction were neither diligent nor effective to determine the whereabouts of Mr. Osorio Rivera, to establish what had happened, and to identify and punish those responsible; nor did they respect the guarantee of a reasonable time (*supra* para. 219). In addition, the Court has indicated that, in the case of facts such as those alleged in this case, it is reasonable to consider that there are different degrees of responsibility and different levels (*supra* para. 194); yet, only one person was investigated for the offense of enforced disappearance, and he was finally acquitted, without taking into account the allegations regarding the physical mistreatment or the possible participation of other persons in the facts.

244. Taking the foregoing into account, as well as its case law,³⁷⁶ the Court decides that the State must conduct effective investigations, and open criminal proceedings in relation to the enforced disappearance of Jeremías Osorio Rivera in order to establish the responsibility of the masterminds and perpetrators of the facts of this case and to apply the legal penalties and consequences. The State must conduct and conclude the pertinent investigations and proceedings within a reasonable time, in order to establish the whole truth concerning the facts based on the above-mentioned criteria for investigating cases of enforced disappearance,³⁷⁷ and removing all the obstacles that maintain impunity in this case.³⁷⁸ Due diligence in the investigation means that all the relevant State authorities are obliged to collaborate in gathering evidence, so that they must provide the judge, prosecutor or other judicial authorities with all the information required and abstain from actions that obstruct the progress of the investigations. In particular, the State must:

- a) Open and conduct the pertinent investigation or investigations into the facts of this case, avoiding omissions when gathering evidence and following up on logical lines of investigation;
- b) Investigate all the elements that constitute enforced disappearance with due diligence;
- c) Identify and individualize the perpetrators and masterminds of the victim's enforced disappearance;
- d) Ensure that the competent authorities conduct the corresponding investigations *ex officio* and that, to this end, they have available and use all the logistic and scientific resources required to gather and process the evidence and, in particular, that they have the authority to access the pertinent documentation and information to investigate the facts

³⁷⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 174, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 285.

³⁷⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 174, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 285.

³⁷⁸ Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra*, para. 277, and *Case of González Medina and family members v. Dominican Republic*, *supra*, para. 285.

denounced and to promptly take those actions and make those inquiries essential for clarifying what happened to the person disappeared in this case;

e) Since this is a case of a gross human rights violations and considering the permanent or continuing nature of enforced disappearance the effects of which do not cease until the victim's whereabouts are established or his remains are identified, the State must abstain from using mechanisms to benefit the authors such as amnesty, or any other similar provisions including the statute of limitations, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem* to exempt responsibility, and to release itself from this obligation,³⁷⁹ and

f) Guarantee that the investigations into the facts that constitute enforced disappearance in this case are always conducted in the ordinary jurisdiction.

245. The State must ensure full access and legal standing to the victims or their next of kin at all stages of the investigation and prosecution of those responsible. The purpose of this participation must be access to justice and to know the truth of what happened. In addition, the results of the corresponding proceedings must be publicized so that Peruvian society may know the facts that are the subject of this case, as well as those responsible.³⁸⁰

2. Determination of the victim's whereabouts

246. The Commission asked the State to conduct "a complete, impartial and effective investigation into the whereabouts of Jeremías Osorio Rivera and, should it be discovered that the victim is not alive, take the steps necessary for his remains to be returned to his family."

247. The representatives asked that the State take the necessary measures to discover the possible final whereabouts or location of the remains of Jeremías Osorio Rivera and return them to his family. Also, if the remains are found, the State must provide the necessary resources to transfer the remains and to bury them in the place chosen by his family without any cost to them.

248. The State indicated that, Ministerial Decision No. 268-2012-JUS had authorized a financial transfer against Requisition 006-Ministry of Justice and Human Rights of up to one million one hundred thousand new soles in favor of the Public Prosecution Service so that the latter could acquire the chemical reagents and inputs required to implement the procedure of identifying 1,500 human osseous remains. It reiterated its commitment to coordinate, as necessary, with the Institute of Forensic Medicine of the Public Prosecution Service in order to incorporate into the criminal proceeding the established procedures when graves with human remains were found that could be related to the facts of the instant case. To this end, it would coordinate with the members of Jeremías Osorio Rivera's family in order to take DNA samples for comparison with the database kept by the Institute of Forensic Medicine of the Public Prosecution Service.

249. In the instant case, the whereabouts of Jeremías Osorio Rivera remain unknown and, to date, the State has not taken any steps to discover the victim's whereabouts, but continues to deny that an enforced disappearance occurred (*supra* paras. 108 to 110). The Court stresses that the victim disappeared more than 22 years ago, so that it is a reasonable expectation of his family

³⁷⁹ Cf. *Case of Barrios Altos v. Peru. Merits, supra*, para. 41, and *Case of González Medina and family members v. Dominican Republic, supra*, para. 285(e).

³⁸⁰ Cf. *Case of El Caracazo v. Venezuela. Reparations and costs. Judgment of August 29, 2002. Series C No. 95*, para. 118, and *Case of García and family members v. Guatemala, supra*, para. 197.

members that his whereabouts be identified, which would constitute a measure of reparation and, therefore, gives rise to the correlative obligation of the State to meet it.³⁸¹ It would also alleviate the family's anguish and suffering as a result of the above-mentioned uncertainty.³⁸²

250. It is extremely important for the family to receive the body of a person who has been forcibly disappeared, because this allows them to bury him according to their beliefs, and to close the mourning process that they have experienced throughout all these years.³⁸³ In addition, the Court considers that the remains provide evidence of what happened and, together with the place they are found, can provide valuable information about the perpetrators of the violations and the institution to which they belonged.³⁸⁴

251. Consequently, the State must conduct a genuine search using the appropriate judicial and administrative mechanisms, during which it makes every effort to discover the whereabouts of Jeremías Osorio Rivera as soon as possible. The search should be carried out systematically and rigorously, with the appropriate and adequate human, technical and scientific resources. The family must be informed of the said measures, endeavoring to ensure their presence when possible.

252. If, following the steps taken by the State, it is found that the victim has died, the mortal remains must be returned to this family, after his identity has been verified, as rapidly as possible and without any cost to them. In addition, the State must cover the funeral costs, when appropriate, in agreement with the family.³⁸⁵

C. Measures of rehabilitation and satisfaction, and guarantees of non-repetition

1. Rehabilitation

253. The Commission underlined the need to implement a suitable program of psychosocial care for the members of the victim's family to redress the human rights violations declared in its Merits report.

254. The representatives asked the Court to order the Peruvian State to ensure medical and psychological treatment, permanently and free of charge, for the victim's next of kin, ensuring their participation in the process.

255. The State emphasized that its international responsibility for the facts denounced had not been proved; however, it would abide by the decision of the Court in an eventual judgment. It added that the purpose of the Comprehensive Health System was to protect the health of the Peruvians who do not have health insurance, giving priority to those vulnerable populations who

³⁸¹ Cf. *Case of Neira Alegria et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Gudiel Alvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 333.

³⁸² Cf. *Case of Ticona Estrada et al. v. Bolivia, supra*, para. 155, and *Case of Torres Millacura et al. v. Argentina, supra*, para. 136.

³⁸³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 333.

³⁸⁴ Cf. *Case of the Las Dos Erres Massacre v. Guatemala, supra*, para. 245, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 333.

³⁸⁵ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs, supra*, para. 185, and *Case of García and family members v. Guatemala, supra*, para. 200.

live in poverty or in extreme poverty, and the system provides both medical and psychological care.

256. Having verified the harm suffered by the members of Jeremías Osorio Rivera's family (*supra* paras. 227 to 234), the Court finds, as it has in other cases,³⁸⁶ that it is necessary to establish a measures of reparation that provides appropriate care for the physical and mental problems suffered by the victims as a result of the violations established in this Judgment. In order to contribute to the reparation of this harm, the Court establishes the State's obligation to provide immediately, free of charge, through its specialized health care institutions, adequate and effective medical and psychological or psychiatric treatment to the victims who request this, including the provisions of any medicines they may require also free of charge, taking into account their individual problems. This means that the victims must receive differentiated treatment as regards the procedures and the steps they must take to be attended in the public hospitals.³⁸⁷ Also, the respective treatment must be provided, to the extent possible, in the center nearest to their place of residence³⁸⁸ in Peru for as long as necessary. When providing the psychological or psychiatric treatment, the specific circumstances and needs of each victim must be considered, so that they are provided with collective, family and individual treatment, as agreed with each of them following an individual evaluation.³⁸⁹ The victims who request this measure of reparation, or their legal representatives, have six months from notification of this Judgment to advise the State of their intention to receive psychological or psychiatric treatment.³⁹⁰

2. **Satisfaction**

a) *Publication and dissemination of the Judgment*

257. The Commission requested the establishment and dissemination of the historical truth of the facts.

258. The representatives asked the Court to order the State to publish, within six months, at least the sections on the context and the proven facts, together with the operative paragraphs of the judgment in the official gazette and in a national newspaper, as well as on the web page of the Ministry of Justice, with no more than three links from the main page, to be maintained until the judgment has been complied with fully.

259. The State did not present any objections to this measure, once the Court had delivered a ruling in this case.

260. The Court finds, as it has in other cases,³⁹¹ that the State must publish, within six months of notification of this Judgment: (a) the official summary of this Judgment prepared by the Court,

³⁸⁶ Cf. *Case of Barrios Altos v. Peru. Reparations and costs*, *supra*, paras. 42 and 45, and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 254.

³⁸⁷ Cf. *Case of Heliodoro Portugal v. Panama. Monitoring compliance with judgment*. Order issued by the Inter-American Court on May 28, 2010, considering paragraph 28, and *Case of Anzualdo Castro v. Peru. Monitoring compliance with judgment*. Order issued by the Inter-American Court on August 21, 2013, considering paragraph 45.

³⁸⁸ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of Luna López v. Honduras*, *supra*, para. 224.

³⁸⁹ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra*, para. 270, and *Case of Luna López v. Honduras*, *supra*, para. 224.

³⁹⁰ Cf. *Case of Rosendo Cantú et al. v. Mexico*, *supra*, para. 253, and *Case of Luna López v. Honduras*, *supra*, para. 224.

³⁹¹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*, *supra*, para. 79, and *Case of Luna López v. Honduras*, *supra*, para. 230.

once, in the official gazette; (b) the official summary of this Judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this Judgment in its entirety, available for one year, on an official web site.

b) *Public act to acknowledge international responsibility*

261. The Commission asked that the State acknowledge publicly its international responsibility and also make a public apology for the violations declared in its Merits report.

262. The representatives ask that the State hold an act of public apology that dignified the memory of Jeremías Osorio and the long struggle of his family members, after consulting them. In their final written arguments, they reiterated that this act of public apology should be attended by the most senior authorities, adding that it should be presided by the President in representation of the State; moreover, during the act, the said authority should read the relevant parts of the judgment. The act should be disseminated by a public communications medium with national coverage, at a peak time, and it should be organized in consultation with the family.

263. The State did not present any objection to this measure, once the Court has delivered a ruling in this case.

264. As it has in other cases,³⁹² the Court finds it necessary, in order to redress the harm caused to the victims and to avoid a repetition of acts similar to those of this case, to establish that the State must hold a public act to acknowledge international responsibility for the facts of this case. During this act, reference must be made to the human rights violations declared in this Judgment. Also, it must take place in a public ceremony in the presence of senior State officials and the victims in this case. The State must reach agreement with the victims or their representatives on how this public act of acknowledgement will be carried out, as well as its characteristics, such as the place and date. To this end, the State has one year from notification of this Judgment.

c) *Scholarships*

265. The representatives asked the Court to require the State to grant a scholarship in a Peruvian public establishment to the children of Jeremías Osorio Rivera that would cover all the costs of their education, from the moment the beneficiaries request this of the State and until the conclusion of their higher education, whether vocational training or university studies.

266. The State underscored that its international responsibility for the facts denounced had not been proved; however, it would abide by the decision of the Court in an eventual judgment.

267. The Court recognizes that the enforced disappearance of Jeremías Osorio Rivera resulted in the loss of the person who supported the family, which has had serious repercussions on the life of his children, including the effects on their possibilities of acquiring a formal education.³⁹³ Consequently, the State must grant Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán a scholarship in a Peruvian public establishment, agreed between each child of Jeremías Osorio Rivera and the State of Peru, to study or to obtain vocational training. The scholarship must run from the time the beneficiaries request

³⁹² Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Case of Luna López v. Honduras, supra*, para. 227.

³⁹³ Cf. Report on the psychological evaluation made by Carlos Alberto Jibaja Zárate on August 15, 2013 (evidence file, volume XI, affidavits, folios 5336 to 5348), and Statement made by Edith Laritza Osorio Gaytán before notary public on August 14, 2013 (evidence file, volume XI, affidavits, folios 5314 to 5318).

this from the State until the conclusion of their higher vocational training or university studies, and must cover all the expenses until the completion of these studies, including academic or educational materials and living expenses. The scholarship should also cover transportation between the town where the beneficiary studies and their community or place of residence.³⁹⁴ These scholarships must be made effective as soon as possible after the notification of this Judgment so that the beneficiaries may begin their studies in the coming year, if they so wish.

3. Guarantees of non-repetition

268. In this regard, the Commission underscored the need for the State to adopt the necessary measures to avoid a repetition of similar acts to those of this case in future, in keeping with the obligation of prevention, and the guarantee of the human rights recognized in the American Convention.

a) Adaptation of the definition of the offense of enforced disappearance to international standards

269. The representatives asked the Court to order Peru to adapt the definition of the offense of enforced disappearance to international standards, in particular Article II of the Inter-American Convention on Forced Disappearance of Persons, by the amendment, as soon as possible, of article 320 of the Criminal Code. They also requested the amendment of plenary decision No. 9/2009 which establishes a temporal limitation on the criminal prosecution of offenses of enforced disappearance of persons.

270. The State reiterated its observations in the chapter on the obligation to adopt provisions of domestic law (*supra* para. 175).

271. The Court appreciates the information provided by the State, but recalls that, in the judgment delivered in the *case of Gómez Palomino*, it had already ordered the said adaptation of domestic law.³⁹⁵ Thus, the Court reiterates that the State must take the necessary steps to amend, within a reasonable time, its criminal legislation in order to make the definition of the offense of enforced disappearance compatible with the international parameters for the enforced disappearance of persons, paying special attention to the provisions of the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

b) Training programs for the Armed Forces

272. The Commission indicated the need to implement permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces to avoid the repetition of similar acts in future.

273. The State presented information on the different training courses on international human rights law and international humanitarian law implemented in the jurisdiction of the Military Police, the Ministry of Defense, and the National Commission for the Study and Application of International Humanitarian Law, and considered that it had taken measures relating to permanent training and dissemination on these subjects "that are in keeping with the[ir] study and dissemination."

³⁹⁴ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs, supra*, para. 148, and *Case of Escué Zapata v. Colombia, supra*, para. 170.

³⁹⁵ Cf. *Case of Gómez Palomino v. Peru. Merits, reparations and costs, supra*, twelfth operative paragraph.

274. Although the Court has already ordered the Peruvian State to provide permanent training courses on human rights to members of the Police and the Armed Forces in the cases of *La Cantuta*³⁹⁶ and *Anzualdo Castro*,³⁹⁷ there is no record that, to date, these measures have been complied with fully. Given that education on human rights within the Armed Forces is crucial in order to guarantee the non-repetition of facts such as those of the instant case, the Court finds it pertinent to order the State to implement, within a reasonable time, permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces, including, specifically, issues relating to the enforced disappearance of persons and control of conformity with the Convention.

4. Other measures

275. The representatives asked that the Court to order the State, when evaluating and ratifying judges, to use criteria relating to their performance as regards their knowledge and application of international standards for the investigation of gross human rights violations. In addition, they indicated that a special subsystem should be created for the investigation and prosecution of gross human rights violations, composed of judges knowledgeable in international standards, whose performance of their function should be permanently evaluated. They also asked the Court to order the State to name a street, square or school in the city of Cajatambo after Jeremías Osorio Rivera. Furthermore, they asked that manuals used for training the Armed Forces personnel be compatible with the international standards for detentions and the treatment of detainees while in their custody. They added that, although the Court has ordered the Peruvian State to organize permanent training courses for members of the Police and Armed Forces during other proceedings before the Court, on those occasions it had not referred to the amendment of military manuals, directives and doctrine.

276. Regarding these other measures of reparation that have been requested, the Court considers that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and appropriate to remedy the violations suffered by the victims and does not find it necessary to order the said measures.

D. Compensation

1. Pecuniary damage

a) Loss of earnings

277. The representatives indicated that Jeremías Osorio Rivera was 28 years old at the time of his disappearance and, based on available data, in 1991 male life expectancy in rural areas was 58.91 years. Therefore, if he had not disappeared, he could have lived another 31 years. Given that he worked as a farmer, and raised and sold animals, the representatives made their calculation on the basis of the minimum wage in Peru, and requested the sum of US\$57,020.73 for loss of earnings.

278. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, “[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions.” In its final written

³⁹⁶ Cf. *Case of La Cantuta v. Peru*, *supra*, para. 240.

³⁹⁷ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*, *supra*, para. 193.

arguments, the State reiterated that “since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused.”

279. Regarding the earnings that Jeremías Osorio Rivera failed to receive, the representatives made the respective calculation on the basis of the minimum living wage which, up until 2012, would represent the sum of US\$42,237.58 using the exchange rate of 2.60. From this amount, 25% was subtracted for personal expenses and, then, annual interest of 6% of the loss of earnings was applied from 2012, until 2022, the date on which the life expectancy of Mr. Osorio Rivera would culminate.

280. The Court considers, as it has in other cases of enforced disappearance,³⁹⁸ that, in this case in which the victim’s whereabouts are unknown, it is possible to apply criteria of compensation for his loss of earnings consisting of the income he would have received during his probable lifetime. Taking into account the victim’s age at the time of his disappearance, the evidence in the file, and based on criteria of equity, the Court decides to establish the sum of US\$57,500.00 (fifty-seven thousand five hundred United States dollars) for the loss of earnings of Jeremías Osorio Rivera. Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half must be distributed in equal shares among the children of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

b) *Consequential damage*

281. The representatives indicated that, since the expenses they have incurred were disbursed over almost 21 years, the family members have not kept the corresponding vouchers. The representatives therefore asked the Court to establish, in equity, the amount that the State should pay to reimburse the expenses incurred.

282. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, “[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions.” In its final written arguments, the State reiterated that “since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused.”

283. In order to discover the fate and whereabouts of Mr. Osorio Rivera, his family took numerous steps before the State authorities; in particular they visited courts, police stations and detention centers. The Court finds that the State should compensate them for these expenses, because they have a direct causal nexus with the violations in this case.³⁹⁹ The Court observes that the file does not contain any appropriate vouchers to determine the precise amount of the expenditure that the said steps must have represented for the members of Jeremías Osorio Rivera’s family. However, based on the specific circumstances of the case, the Court finds it pertinent to establish, in equity, the sum of US\$10,000.00 (ten thousand United States dollars), as

³⁹⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, paras. 46 and 47, and *Case of Chitay Nech et al. v. Guatemala*, *supra*, para. 269.

³⁹⁹ Cf. *Case of Castillo Páez v. Peru. Reparations and costs*. Judgment of November 27, 1998. Series C No. 43, para. 76, and *Case of Luna López v. Honduras*, *supra*, para. 215.

compensation for this concept. Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half to Porfirio Osorio Rivera.

2. *Non-pecuniary damage*

284. The representatives asked the Court to establish that the State must pay Jeremías Osorio Rivera for non-pecuniary damage the sum of US\$100,000.00, to be distributed among his heirs. In addition, it asked the Court to establish that the State was obliged to pay US\$50,000.00 to the permanent companion and children of Jeremías Osorio Rivera, US\$20,000.00 to the victim's mother and siblings, and US\$30,000.00 to Porfirio Osorio Rivera, who has been the main promoter in the search for justice for the disappearance of his brother.

285. The State affirmed that none of the rights recognized in the American Convention had been violated and indicated its profound disagreement with the large sums requested by the representatives arguing that, "[t]his type of claim seeks to convert the [...] Court into a financial entity, which is not in keeping with the object and purpose of its functions." In its final written arguments, the State reiterated that "since the State is not internationally responsible for the alleged disappearance of Jeremías Osorio Rivera, it is not required to provide reparation for the presumed harm caused."

286. International case law has established repeatedly that the judgment may constitute *per se* a form of reparation.⁴⁰⁰ Nevertheless, in its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may include the suffering and afflictions caused to the direct victim and his next of kin, the impairment of values that are of great significance to the individual, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family."⁴⁰¹

287. Bearing in mind the circumstances of this case, the violations committed, the different degrees of suffering caused and experienced, the time that has elapsed, the denial of justice, and also the changes in the living conditions of some family members, the proven violations of the personal integrity of the victim's family, and the other consequences of a non-pecuniary nature they suffered, the Court will now establish, in equity, the compensation for non-pecuniary damage in favor of the victims.

288. First, the Court considers that the circumstances that surrounded the detention and subsequent disappearance of Jeremías Osorio Rivera were such that they caused profound fear and suffering. In previous cases,⁴⁰² the Inter-American Court has found that similar circumstances had caused the victim serious non-pecuniary harm that had to be assessed in its full dimension when establishing compensation for this concept. In light of these criteria, the Court considers that Jeremías Osorio Rivera should be compensated for non-pecuniary damage and orders, in equity, the payment of US\$80,000.00 (eighty thousand United States dollars). Half this amount must be delivered to Santa Fe Gaitán Calderón, and the other half must be shared equally among the children of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

⁴⁰⁰ Cf. *Case of Suárez Rosero v. Ecuador. Reparations and costs*. Judgment of January 20, 1999. Series C No. 44, para. 72, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 250.

⁴⁰¹ *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, and *Case of Luna López v. Honduras, supra*, para. 251.

⁴⁰² Cf. *Case of Aloeboetoe et al. v. Suriname. Reparations and costs*. Judgment of September 10, 1993. Series C No. 15, para. 51, and *Case of Gómez Palomino v. Peru. Merits, reparations and costs, supra*, para. 132.

289. Second, the Court finds that Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán have experienced great suffering or their life projects were affected as a result of the enforced disappearance of Jeremías Osorio Rivera. Consequently, the Court establishes, in equity, the sum of US\$45,000.00 (forty-five thousand United States dollars), for non-pecuniary damage, in favor of Santa Fe Gaitán Calderón, and of each child of Jeremías Osorio Rivera, namely: Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán.

290. Lastly, considering the effects on their personal integrity suffered to different degrees as a result of the facts of this case, the Court establishes, in equity, the sum of US\$20,000.00 (twenty thousand United States dollars) for Juana Rivera Lozano, and US\$10,000.00 (ten thousand United States dollars) for each of the following siblings of Jeremías Osorio Rivera: Epifanía Alejandrina, Elena Máxima, Adelaida, Silvia, Mario and Efrain, all with the surnames Osorio Rivera. In addition, the Court establishes, in equity, the sum of US\$45,000.00 (forty-five thousand United States dollars) for Porfirio Osorio Rivera, who has been the main promoter of the search for justice for the disappearance of his brother, Jeremías Osorio Rivera.

E. Costs and expenses

291. The representatives indicated that the next of kin incurred a series of expenses for the preliminary actions they took concerning the disappearance of Jeremías Osorio, for which they do not have receipts, but rather documents with the names of the persons who sponsored the initial investigation. In both the domestic and the international proceedings, the family of Jeremías Osorio Rivera has been supported by the *Asociación Pro Derechos Humanos* (APRODEH), which, as a non-profit organization, has not charged fees. Nevertheless, in the course of the domestic proceedings, as well as in the proceedings before the Commission and the Court, it has incurred expenses for telephone calls, photocopies, and travel within the country; and, for the hearing of September 29, 2013, they incurred expenses amounting to US\$2,554.68 according to the supporting documents submitted.

292. The State considered it “unacceptable that this claim is submitted without providing receipts and other documents that would justify the admissibility of reparation.” According to the State, it was only admissible to pay costs and expenses if there were receipts, travel vouchers, or other documents that proved that the disbursement was made owing to these proceedings.

293. The Court reiterates that, pursuant to its case law,⁴⁰³ costs and expenses form part of the concept of reparation, because the activities deployed by the victims in order to obtain justice, at both the domestic and the international level, entail disbursements that must be compensated when the State’s international responsibility has been declared in a judgment. Regarding the reimbursement of costs and expenses, the Court must assess them prudently; they include the expenses arising before the authorities of the domestic jurisdiction, and also those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be carried out based on the principle of equity and taking into account the expenses indicated by the parties, provided the *quantum* is reasonable.⁴⁰⁴

⁴⁰³ Cf. *Case of Velázquez v. Honduras. Reparations and costs*, *supra*, para. 42, and *Case of Luna López v. Honduras*, *supra*, para. 258.

⁴⁰⁴ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 316.

294. The Court has indicated that “the claims of the victims or their representatives concerning costs and expenses, and the evidence that support them, must be presented to the Court at the first procedural moment granted them; that is, in the motions and arguments brief, without prejudice to those claims being updated subsequently, in keeping with the additional costs and expenses incurred owing to the proceedings before this Court.”⁴⁰⁵ Furthermore, the Court reiterates that it is not sufficient to merely forward probative documents; rather, the parties must explain how the evidence relates to the fact that it is considered to represent and, in the case of financial disbursements, the items and their justification must be clearly established.⁴⁰⁶

295. Regarding the expenses incurred by the next of kin in the initial stages, the Court has already assessed these under the concept of consequential damage. In the case of the work of APRODEH, which has supported the next of kin of Jeremías Osorio Rivera in the investigation and litigation of this case at the domestic and the international levels from 1997 to date, the only vouchers submitted correspond to expenses for travel, accommodation, food and per diem to attend the hearing on this case held before the Court in San José, Costa Rica.

296. Consequently, the Court decides to establish, in equity, the sum of US\$10,000.00 (ten thousand United States dollars) for the *Asociación Pro Derechos Humanos* (APRODEH) to reimburse costs and expenses for its work in the litigation of the case at the domestic and the international levels since 1997. This amount must be delivered directly to the organization. The Court considers that, in the proceeding on monitoring compliance with this Judgment, it may decide that the State must reimburse the victims or their representatives any reasonable expenses they incur during that procedural stage.

F. Reimbursement of expenses to the Victims’ Legal Assistance Fund

297. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the Inter-American Human Rights System, “in order to “facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”⁴⁰⁷ In this case, the financial assistance required to cover the travel and living expenses required for Porfirio Osorio Rivera and Avelino Trifón Guillén Jáuregui to appear before the Court and to testify during the public hearing held at the seat of the Court in San José, Costa Rica, was granted from this Fund, as well as the cost of preparing and sending the affidavit of a deponent proposed by the representatives (*supra* para. 7).

298. The State had the opportunity to present its observations on the disbursements made in this case, which amounted to US\$3,306.86. Peru indicated that the details of the expenses indicated had been certified by the Court’s Secretariat, and therefore had sufficient credibility. In addition, these disbursements are in keeping with the provisions of the Orders of the acting President of the Court for this case of July 8 and March 12, 2013. However, the State recalled that, before ordering a State to reimburse the expenses incurred to the Fund, the Court must determine

⁴⁰⁵ *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para. 79, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 317.

⁴⁰⁶ *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 277, and Case of Luna López v. Honduras, supra*, para. 259.

⁴⁰⁷ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, “*Creation of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(b), operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, “*Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System*,” article 1(1).

that violations of the American Convention have been committed in a specific case and, in its opinion, this has not occurred in the instant case. Consequently, in application of article 5 of the Rules of the Fund, the Court must assess whether it is appropriate to order the defendant State to reimburse the Legal Assistance Fund for the disbursements made.

299. Based on the violations declared in this Judgment and the fact that the requirements to access the Fund were met, the Court orders the State to reimburse the said Fund the sum of US\$3,306.86 (three thousand three hundred and six United States dollars and eighty-six cents) for the expenses of the appearance of deponents at the public hearing in this case and the preparation and sending of one affidavit. This amount must be reimbursed within 90 days of notification of this Judgment.

G. Means of complying with the payments ordered

300. The State must pay the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this Judgment directly to the persons and organization indicated herein, within one year of notification of this Judgment, in accordance with the following paragraphs.

301. Should the beneficiaries be deceased or die before the respective compensation is delivered to them, this must be delivered directly to their heirs, pursuant to the applicable domestic law. In this regard, the Court has taken note that Juana Rivera Lozano and Efraín Osorio Rivera died in 2010 and 2008, respectively.⁴⁰⁸

302. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent in Peruvian currency, using the exchange rate in force in the Central Bank of the Republic of Peru the day before the payment to make the respective calculation.

303. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit these amounts in their favor in an account or certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and in the most favorable conditions permitted by banking law and practice. If the corresponding compensation is not claimed, when 10 years have passed the amount shall be returned to the State with the interest accrued.

304. The amounts allocated in this Judgment as compensation and to reimburse costs and expenses must be delivered to the persons and organization indicated integrally, as established in this Judgment, without any reductions for eventual taxes or charges.

305. If the State incurs in arrears, it must pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Peru.

**IX
OPERATIVE PARAGRAPHS**

306. Therefore,

⁴⁰⁸ Cf. Death certificate of Juana Rivera Lozano (file of proceedings before the Commission, volume I, folio 388), and Report of the psychological evaluations made by Carlos Alberto Jibaja Zárate on August 15, 2013 (evidence file, volume XI, affidavits, folio 5351).

THE COURT

DECIDES,

unanimously,

1. To reject the preliminary objections filed by the State concerning the alleged failure to comply with the six-month period for the presentation of the initial petition, and the alleged lack of competence *ratione temporis* of the Inter-American Court in relation to the Inter-American Convention on Forced Disappearance of Persons, in the terms of paragraphs 19 to 23 and 27 to 35 of this Judgment.

DECLARES:

unanimously that:

2. The State is responsible for the enforced disappearance of Jeremías Osorio Rivera and, consequently, for the violation of the rights to personal liberty, personal integrity, life, and juridical personality recognized in Articles 7, 5(1), 5(2), 4(1) and 3 of the American Convention on Human Rights, in relation to the obligation to respect and to ensure these rights, contained in Article 1(1) of this instrument, as well as in relation to Article I(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Jeremías Osorio Rivera, in the terms of paragraphs 111 to 159 and 165 to 171 of this Judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligation to respect and to ensure these rights and to adopt provisions of domestic law, contained in Articles 1(1) and 2 of this instrument, as well as in relation to Articles I(b) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Jeremías Osorio Rivera, Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán, Jersy Jeremías Osorio Gaitán, Juana Rivera Lozano, Epifanía Alejandrina Osorio Rivera, Elena Máxima Osorio Rivera, Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Mario Osorio Rivera and Efraín Osorio Rivera, in the terms of paragraphs 176 to 221 of this Judgment.

4. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) of the American Convention on Human Rights, in relation to the obligation to respect rights, contained in Article 1(1) of this instrument, to the detriment of Santa Fe Gaitán Calderón, Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán, Jersy Jeremías Osorio Gaitán, Juana Rivera Lozano, Epifanía Alejandrina Osorio Rivera, Elena Máxima Osorio Rivera, Porfirio Osorio Rivera, Adelaida Osorio Rivera, Silvia Osorio Rivera, Mario Osorio Rivera and Efraín Osorio Rivera, in the terms of paragraphs 227 to 234 of this Judgment.

AND ESTABLISHES:

unanimously that:

5. This Judgment constitutes, *per se*, a form of reparation.

6. The State must open and conduct the necessary investigations and proceedings, within a reasonable time, in order to establish the truth of the facts, as well as to identify and to punish, as appropriate, those responsible for the enforced disappearance of Jeremías Osorio Rivera, as established in paragraphs 243 to 245 of this Judgment.
7. The State must conduct, forthwith, a genuine search, during which it makes every effort to discover the whereabouts of Jeremías Osorio Rivera, as established in paragraphs 249 to 252 of this Judgment.
8. The State must provide, immediately, medical and psychological or psychiatric treatment to those victims who request this, as established in paragraph 256 of this Judgment.
9. The State must make the publications indicated in paragraph 260 of this Judgment.
10. The State must organize a public act to acknowledge its international responsibility for the facts of this case, as established in paragraph 264 of this Judgment.
11. The State must grant Edith Laritza Osorio Gaytán, Neida Rocío Osorio Gaitán, Vannesa Judith Osorio Gaitán and Jersy Jeremías Osorio Gaitán a scholarship in a Peruvian public establishment mutually agreed between each child of Jeremías Osorio Rivera and the State of Peru, so that they may study or undertake vocational training, as established in paragraph 267 of this Judgment.
12. The State must adopt the necessary measures to reform its criminal laws, within a reasonable time, in order to define the offense of enforced disappearance of persons in a way that is compatible with the relevant international parameters, as established in paragraph 271 of this Judgment.
13. The State must implement, within a reasonable time, permanent programs on human rights and international humanitarian law in the training schools of the Armed Forces, as established in paragraph 274 of this Judgment.
14. The State must pay the amounts established in paragraphs 280, 283, 288, 289, 290 and 296 of this Judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses in the terms of the said paragraphs and of paragraphs 300 to 305, and also reimburse the Victims' Legal Assistance Fund the amount established in paragraph 299 of this Judgment.
15. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.
16. The Court will monitor full compliance with this Judgment, in the exercise of its attributes and pursuant to its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with all its provisions.

Manuel Ventura Robles
Acting President

Alberto Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary