

**REPORT No. 140/11**  
CASE 11.845  
MERITS  
JEREMÍAS OSORIO RIVERA AND OTHERS  
PERU  
October 31, 2011

**I. SUMMARY**

1. On November 20, 1997, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Porfirio Osorio Rivera and the Association for Human Rights (*Asociación Pro Derechos Humanos*, APRODEH; hereinafter also “the petitioners”), on behalf of Jeremías Osorio Rivera (hereinafter also “the alleged victim”), in which they alleged the violation by the Republic of Peru (hereinafter also “Peru,” “the State,” or “the Peruvian State”) of rights enshrined in the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”). The petitioners affirmed that Mr. Jeremías Osorio was detained by members of an Army patrol on April 28, 1991, in the province of Cajatambo, department of Lima, and that his whereabouts have remained unknown since that date. They claimed that complaints presented by the alleged victim’s family had proved fruitless and that a trial pursued under military jurisdiction was dismissed in a final ruling in February 1996. They reported that the investigation was reopened in June 2004, but that no final decision was reached. They noted that although over 20 years have passed since the alleged forced disappearance of Jeremías Osorio Rivera, the Peruvian authorities have not clarified the facts, determined his whereabouts, punished those responsible, or provided his next-of-kin with others forms of redress.

2. The State described the measures taken by its courts and prosecutorial system in connection with the alleged forced disappearance of Jeremías Osorio Rivera. It said that since the reopening of the investigation in June 2004, the Public Prosecution Service and the judicial branch had been taking a number of measures to ascertain the facts and punish those responsible. It held that the passage of several years without a final judicial resolution was due to the complexity of the case and of the crime under investigation.

3. After analyzing the positions of the parties, the Inter-American Commission concluded that the Peruvian State was responsible for violating the rights enshrined in Articles 3, 4, 5, 7, 8.1, and 25.1 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, as well as those contained in Articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

**II. PROCEEDINGS BEFORE THE IACHR**

4. On November 20, 1997, the Commission received the petition and registered it as No. 11.845. Its processing up to the admissibility decision is set out in detail in report No. 76/10 of July 12, 2010.<sup>1</sup>

5. In that report the IACHR ruled the petition admissible regarding the possible violation of the rights enshrined in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, as well as those contained in Articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

6. On July 21, 2010, the Commission gave the parties notice of admissibility report No. 76/10 and granted a deadline of three months for the petitioners to submit their comments on the merits,

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<sup>1</sup> IACHR, Report No. 76/10, Petition 11.845, Admissibility, Jeremías Osorio Rivera, Peru, July 12, 2010, paras. 4 and 5, available at [www.cidh.oas.org/casos/10.sp.htm](http://www.cidh.oas.org/casos/10.sp.htm).

in compliance with Article 37.1 of its Rules of Procedure. The petitioners replied by means of a submission received on December 8, 2010, which was conveyed to the State on February 8, 2011, with a three-month deadline in which to submit its comments. The State sent its comments on April 29, 2011, and, on May 18 of that same year, submitted complementary information. The State sent further additional information on September 6, 2011, and, on September 7 of that year, the petitioners submitted a communication.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

7. By way of context, the petitioners contended that up until April 1991, Mr. Jeremías Osorio Rivera resided in the community of Cochas-Paca, Cajatambo province, in the north of Lima department. Between 1989 and 1992, they said, the Shining Path irregular armed group (*Sendero Luminoso*) conducted a series of violent attacks on that region's inhabitants. During the same period, the security forces committed serious human rights violations, such as torture, executions, and disappearances against persons suspected of collaborating with Shining Path.

8. The petitioners alleged that following the coup d'état of April 5, 1992, the Peruvian justice system refrained from investigating the war crimes and crimes against humanity committed by the security forces. They noted that Amnesty Laws Nos. 26479 and 26492 of June and July 1995 prevented the prosecution of members of the armed forces involved in human rights violations. They claimed that despite the restoration of the democratic and constitutional order in late 2000, some governments have taken steps to avoid the obligation of investigating and punishing the crimes committed during the internal armed conflict. For instance, they stated that on August 31, 2010, former President Alan García enacted Legislative Decree No. 1097, setting differentiated criteria for the dismissal of complaints alleging human rights violations. Although that decree remained in force for only two weeks, they contended that several defendants facing charges for serious human rights violations were able to get their prosecutions dismissed.

9. With regard to the specific facts of this case, the petitioners allege that on April 28, 1991, the alleged victim and his cousin Gudmer Tulio Zárate Osorio were arrested by troops from the Cajatambo Countersubversive Base. They reported that the arrest took place during a social event in Cochas-Paca previously authorized by the commanding officer of the countersubversive base, Lt. Juan Carlos César Tello Delgado. According to their claims, Jeremías Osorio was arrested during a physical altercation with his cousin Gudmer Tulio Zárate, while they were both under the influence of alcohol. They reported that the detainees were taken to the Nunumia community center, where an army patrol made up of soldiers from the Cajatambo Base had set up a temporary camp.

10. The petitioners claimed that on April 29, 1991, Mr. Porfirio Osorio Rivera and Ms. Juana Rivera Lozano, the alleged victim's brother and mother, asked the members of the patrol for information on Jeremías Osorio's situation. They stated that the soldiers merely informed them that the arrest was under the authority of Lt. Juan Carlos Tello. They reported that the lieutenant informed his superiors that explosives and a weapon had been found on the alleged victim, but that no record of seizure or personal search was prepared. They contended that the probable reason for his arrest was an accusation made by his cousin Gudmer Tulio Zárate, on account of the altercation he had had with the alleged victim. They also stated that residents of the community of Nunumia saw Mr. Osorio Rivera with injuries to his face and had heard screams coming from the community center where he was being held.

11. The petitioners reported that on April 30, 1991, Gudmer Tulio Zárate Osorio was released with no formalities whatsoever. They claimed that some of the people from Cochas-Paca remarked that he was released after two sheep were handed over to the members of the army patrol. They reported that on that same date, the patrol left Nunumia on horses lent to them by some of the villagers. They claimed that the soldiers took Mr. Jeremías Osorio Rivera with them, his hands tied behind his back and a hood covering his face.

12. The petitioners stated that on May 9, 1991, the alleged victim's brother, Porfirio Osorio Rivera, lodged a complaint with the Provincial Criminal Prosecutor's Office in Cajatambo, claiming that the whereabouts of Jeremías Osorio had been unknown since April 30, 1991. They indicated that the Provincial Criminal Court of Cajatambo opened committal proceedings for the crime of violating the right to personal freedom against Juan Carlos Tello Delgado, at the time a serving Army lieutenant. They said the committal proceeding was referred to military jurisdiction in July 1992 and was finally shelved on February 7, 1996, through a final ruling of dismissal by the Supreme Council of Military Justice.

13. The petitioners alleged that Lt. Juan Carlos Tello Delgado, in an attempt to conceal the truth, later presented a document dated May 1, 1991, titled "certificate of release", containing the signature and fingerprint of Mr. Jeremías Osorio Rivera. They said this document was not signed by any military or judicial authority, and that, considering the circumstances under which it was produced, it could be inferred that the alleged victim was forced to sign it.

14. According to the petitioners' narrative, the alleged victim's next-of-kin were unable to receive appropriate legal advice during the proceedings before the Cajatambo prosecutor's office and provincial court between May 1991 and July 1992. They reported that attorneys in the province refused to pursue a case against members of the armed forces, for fear of reprisals. They further stated that in May 1991, Mr. Porfirio Osorio filed complaints with the national Attorney General in Lima and with the Human Rights and Peace Commission of the Democratic Constituent Congress, but received no information on any investigations that might have been pursued.

15. According to the allegation, on June 14, 2004, Porfirio Osorio Rivera presented a new complaint to the Office of the Special Prosecutor on Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Graves (hereinafter "the Office of the Special Prosecutor"), concerning the alleged forced disappearance of his brother Jeremías Osorio. They said that on September 24, 2004, the Office of the Special Prosecutor ordered that a preliminary investigation be opened, and that this was refused jurisdiction and referred to the Provincial Joint Prosecutor's Office of Cajatambo on June 8, 2005.

16. The petitioners affirmed that on October 26, 2005, the Office of the Provincial Prosecutor of Cajatambo lodged a formal accusation that a crime against humanity, forced disappearance, and a violation of the right to personal liberty had been committed against Jeremías Osorio Rivera. They stated that, at the request of Porfirio Osorio Rivera, the hearing of the case was transferred to the Fourth Supraprovincial Criminal Court, which handled the investigations phase and presented the case file to the National Criminal Court. They indicated that on October 30, 2007, the Office of the Second Superior National Criminal Prosecutor lodged an accusation against Juan Carlos Tello Delgado, requesting 20 years in prison and other sanctions. They alleged that on April 29, 2008, the National Criminal Court instituted judicial proceedings, declaring that grounds existed to subject the accused to an oral trial.

17. The petitioners affirmed that on December 17, 2008, the National Criminal Chamber issued an acquittal, alleging reasonable doubt as to the responsibility of Juan Carlos Tello Delgado for the acts of which he was accused. According to the allegation, the Criminal Court found that the disappearance of Jeremías Osorio Rivera had been proven, but found that the defendant, Juan Carlos Tello Delgado, had released him, and that this was demonstrated by the slip of paper, allegedly signed by Mr. Osorio Rivera, entitled "certificate of release." The petitioners said that a handwriting analysis conducted by the Criminology Directorate of the National Police at the end of 1991 had indicated that the fingerprint on that paper did not match that of Jeremías Osorio Rivera. They argued that the circumstances of his detention showed that any signature he might have affixed to the paper would have been coerced by the members of the Army patrol, and that it had not been evaluated by the National Criminal Chamber.

18. The petitioners said that on December 18, 2008, they presented, in their capacity as the injured parties in the proceedings, an appeal to void the acquittal issued by the National Criminal Chamber. They reported that on February 23, 2009, the appeal was found admissible and placed before the Supreme Court of Justice, which ordered, on June 24, 2010, the annulment of the first-instance judgment.

19. The petitioners attached a document signed by a staff member of the Office of the Defender of the People on September 13, 2006, which certifies that Mr. Jeremías Osorio Rivera has been missing, by way of forced disappearance, since he was last seen in the province of Cajatambo, department of Lima, on April 30, 1991.<sup>2</sup>

20. As regards their claims on matters of law, the petitioners held that Mr. Jeremías Osorio Rivera was arbitrarily deprived of his life by members of the Army, and that the competent judicial authorities failed to clarify the facts and punish the guilty through a diligent, swift, and effective investigation. They contended that during the criminal proceedings that began in June 2004, several vitally important formalities requested by the injured party were not performed, such as summoning the witnesses who had seen Jeremías Osorio Rivera being transferred from Nunumia to the Cajatambo Countersubversive Base on April 30, 1991. Similarly, no reconstruction of the events was performed, and no inspection was carried out at the Cajatambo military base. They added that the criminal investigation identified Lt. Juan Carlos César Tello alone as the suspected perpetrator; no other members of the patrol that detained the alleged victim or other members of the military who were apprised of his arrest were named.

21. The petitioners contended that in its judgment in the case of Gómez Palomino, handed down on November 22, 2004, the Inter-American Court ordered the Peruvian State to amend its criminal definition of forced disappearance enshrined in Article 320 of the Criminal Code to bring it into line with the terms of the Inter-American Convention on Forced Disappearance of Persons. They noted that in the case of Kenneth Ney Anzualdo Castro, the Inter-American Court again ruled on the failure to comply with that obligation and that, to date, the Peruvian State has not taken the steps necessary to align its legislation's definition of the crime of forced disappearance with the inter-American standards.

22. In light of the foregoing, the petitioners held that the Peruvian State failed in its obligation of respecting and ensuring the human rights set forth in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, together with the rights set out in Articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

## **B. Position of the State**

23. Regarding the situation of impunity alleged by the petitioners, the State argued that the obligation to investigate supposed violations of fundamental rights "pertains to means, not to results." Peru contended that the impartial and independent actions of the judicial authorities since Mr. Porfirio Osorio Rivera presented his complaint on June 14, 2004, demonstrate that efforts have been made to investigate, prosecute, and punish those responsible for the alleged forced disappearance of Mr. Jeremías Osorio Rivera. It added that the many years that have gone by without those responsible for the facts being punished are due to the inherent complexity of forced disappearance investigations and the demands involved in identifying the perpetrators of this type of crime.

24. The State presented general information on the Public Prosecution Service's activities with exhumations, identifying remains, and investigations in forced disappearance cases. It said that in the year 2001, Internal Directive No. 011-MP-FN was issued, regulating "investigations by the prosecution service after the discovery of suspected sites with human remains related to serious human rights violations." Peru added that resolution No. 1262-2003-MP-FN, adopted by the Attorney General of the Nation on August 13, 2003, created the Specialized Forensic Team, attached to the Legal Medicine Institute and responsible for forensic procedures formalities in cases involving disappearances that took place during the internal armed conflict.

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<sup>2</sup> Communication of the petitioners, received on March 9, 2010, attached, document entitled "Certificate of Absence by Forced Disappearance," issued on September 13, 2006, by the Office of the Defender of the People in Lima, record number 0193.

25. It described the infrastructure, number of professionals hired, and work carried out by the Specialized Forensic Team. It reported that using resources of the Public Prosecution Service and international cooperation assistance, a modern Forensic Investigations Laboratory has been built in Ayacucho, which is being used exclusively to locate and identify human remains belonging to the disappeared. It said that between 2008 and 2010, the Specialized Forensic Team succeeded in recovering the human remains of 1,047 individuals, 804 of whom were identified, with 669 being returned to their next-of-kin. It reported that in order to pursue effective investigations of the serious human rights violations committed during the internal armed conflict, the Public Prosecution Service created a subsystem of prosecutors' offices specializing in crimes against humanity, comprising three Senior Prosecutors' Offices in Lima and nine Supraprovincial Prosecutors' Offices in the departments where the highest levels of political violence were recorded, such as Ayacucho, Huancavelica, and Huánuco.

26. The State contended that "since the Inter-American Court issued its judgment in the *Barrios Altos* case, the obligation of conducting an investigation, prosecuting, and punishing has been carried out much more effectively than was possible in the past." It said that the *Barrios Altos* judgment marked "a nationwide rejection of the so-called *self-amnesties* issued in order to protect a group of people with ties to those in power at the time." The State submitted statistics on the number of judgments, acquittals, and convictions for the crime of forced disappearance handed down by the National Criminal Chamber between 2004 and 2010, during which time eight people were convicted and 64 were acquitted. It noted that the Public Prosecution Service and the judiciary "are acting within their powers and with full respect for international human rights standards, investigating, prosecuting, and processing the individuals involved; their actions, given the complexity of these cases, have been getting gradually better in recent years."

27. With regard to the judicial proceedings related to the alleged forced disappearance of Jeremías Osorio, the State reports that in 1991, the Mixed Provincial Prosecution Office of Cajatambo opened an investigation. However, it noted that the Mixed Court of Cajatambo recused itself from hearing the criminal proceedings and declined jurisdiction in favor of the military justice system. It said that criminal committal proceedings against Juan Carlos Delgado Tello for the crime of abduction and for crimes against humanity in the form of forced disappearance were opened in 2005. It reported that on December 17, 2008, the National Criminal Chamber issued an acquittal, after finding reasonable doubt regarding Juan Carlos Delgado's responsibility. It further noted that on June 24, 2010, the Supreme Court of Justice overturned that judgment and that, since then, the proceedings have been at the oral trial stage before the National Criminal Chamber. According to the Peruvian State's narrative, the resolution of June 24, 2010, was based on the fact that the National Criminal Chamber failed to properly assess the evidence produced during the investigations and the oral proceedings.

28. The State indicated that it will be presenting more detailed information on the formalities being pursued by the Public Prosecution Service and the judiciary to determine Jeremías Osorio Rivera's whereabouts, cast light on the incident, and punish the guilty. It added that "the office of the Specialized Supranational Attorney has issued communications to various agencies of the Ministry of Defense and, once these have been collected, they will be conveyed to the honorable Inter-American Commission in a supplementary report." As of the date of the approval of this merits report, the IACHR had received no additional information from the Peruvian State in this regard.

29. Although in its final comments on the merits, the State submitted general information on the work carried out by the Specialized Forensic Team and the system of prosecutors' offices in the field of human rights, it made no specific claims regarding the alleged violation of rights enshrined in the American Convention described by the petitioners. Similarly, while it rejected the petitioners' contentions regarding an alleged context of impunity surrounding crimes committed during the internal armed conflict in Peru, it did not challenge the specific claims related to the events of April 28 to May 1, 1991, involving Mr. Jeremías Osorio Rivera.

30. Finally, the Peruvian State presented copies of documents and resolutions of the Public Prosecution Service, a video on the work and physical infrastructure of the Specialized Forensic Team's laboratories, reports on the organization and functions of the system of prosecutors' offices specializing in

human rights violations, and statistical data on human rights proceedings before the National Criminal Chamber and the Supraprovincial Criminal Courts in recent years.

#### **IV. ANALYSIS OF FACTS**

##### **A. Appraisal of the evidence**

31. In accordance with Article 43.1 of its Rules of Procedure,<sup>3</sup> the Commission will examine the facts alleged by the parties and the evidence submitted during the processing of the case at hand. In addition, it will take into account knowledge in the public domain, including resolutions by the committees of the universal human rights system, its own reports on petitions and cases and on the general human rights situation in Peru, publications from nongovernmental organizations, and laws, decrees, and other regulations in force at the time of the facts alleged by the parties.

32. The IACHR will include, in the evidence for this case, the Final Report of the Truth and Reconciliation Commission (hereinafter “the CVR”), published on August 27, 2003, in the city of Lima.<sup>4</sup> This document was placed before the three branches of government of the Peruvian State, the Attorney General’s office, and other agencies of the public administration, in compliance with the mandate given by the President of the Republic in Supreme Decrees 065-2001-PCM and 101-2001-PCM.<sup>5</sup>

33. In the following paragraphs, the IACHR will address the general context surrounding the incidents in the case at hand, the facts already established, and the consequent responsibility of the Peruvian State. Prior to that analysis, the IACHR will speak of the historical background to several of the parties’ contentions and the actions of the main players in the armed conflict that took place in Peru during the 1980s and 1990s.

##### **B. Preliminary considerations – The indiscriminate violence of the insurgent groups and the illegal actions of the security forces**

34. The chapter on “Armed Groups” in the CVR’s Final Report states that in May 1980 the leadership of the group that styled itself the Communist Party of Peru – Shining Path embarked on a plan to overthrow the system of democratic and representative government and to impose its own form of political and social organization in Peru.<sup>6</sup> Some of the tactics chosen by Shining Path in the construction of its “new state” were: the annihilation of community leaders and local authorities; the personality cult surrounding its founder, Abimael Guzmán Reinoso; the extermination of rural communities that did not

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<sup>3</sup> Article 43.1 of the IACHR’s Rules of Procedure provides as follows:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

<sup>4</sup> The CVR’s Final Report has been used by the Commission in a series of cases, as well as by the Inter-American Court of Human Rights in ruling on facts and the international responsibility of the Peruvian State in the following matters: *Case of Anzaldo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202; *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; *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162; *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160; *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136; and *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115.

<sup>5</sup> According to Supreme Decrees 065-2001-PCM and 101-2001-PCM, the CVR’s purpose was to establish the facts and responsibilities of the terrorist violence and human rights violations that were carried out between May 1980 and November 2000 by both the terrorist organizations and the agencies of the State, and to propose initiatives intended to ensure peace and harmony among the people of Peru.

<sup>6</sup> **Annex 1:** Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 29 and 30, available at [www.cverdad.org.pe/iffinal/index.php](http://www.cverdad.org.pe/iffinal/index.php).

support it; and the deliberate use of terror and other actions in violation of international humanitarian law.<sup>7</sup> According to the CVR, the acts of violence claimed by or attributed to this group caused more than 31,000 deaths (54% of the total fatalities of the armed conflict), tens of thousands of displaced persons, vast economic losses, and a lasting dejection among Peru's population.<sup>8</sup>

35. By unleashing its "people's revolutionary war" in 1984, the Túpac Amaru Revolutionary Movement (MRTA) contributed to the insecurity that prevailed in Peru for several years and to the violations of the basic rights of the Peruvian people. The criminal actions claimed by or attributed to this group included attacks on commercial premises, police stations, and the homes of members of the government; targeted killings of ranking public officials; abductions of business owners and diplomats; executions of indigenous leaders; and some deaths on account of the victims' sexual orientation or gender identity.<sup>9</sup>

36. In its Second Report on the Situation of Human Rights in Peru, the IACHR noted that the acts of violence carried out by Shining Path and the MRTA "led to the loss of life and property... in addition to the pain and suffering caused by the permanent state of anxiety to which Peruvian society, in general, was subjected."<sup>10</sup>

37. In its reports on individual cases and on the general human rights situation in Peru, the IACHR noted that during the struggle against Shining Path and the MRTA, the police and the military committed illegal acts that involved serious human rights violations.<sup>11</sup> In addition, it indicated that the security forces carried out arbitrary arrests, torture, rapes, extrajudicial killings, and disappearances, in many cases against people who had no ties to the irregular armed groups.<sup>12</sup>

### C. General considerations regarding the context

#### 1. Systematic use of forced disappearances in the counterinsurgency effort

38. According to the CVR's Final Report, the state agents involved in the counterinsurgency effort embraced forced disappearance as a mechanism to dissuade members of the irregular armed groups and their potential members and sympathizers. Quoting that report, "the intimidating effect and the message that other members of the same family or community could suffer similar violations served as a

<sup>7</sup> **Annex 2:** Final Report of the CVR, 2003, Vol. I, Chapter 1, *The Periods of the Violence*, p. 54. **Annex 3:** Final Report of the CVR, 2003, Vol. I, Chapter 3, *The Faces and Profiles of the Violence*, pp. 168 and 169. **Annex 1:** Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, pp. 127 to 130. **Annex 4:** Final Report of the CVR, 2003, Vol. VI, 1.1 *Killings and Massacres*, p. 16, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>8</sup> **Annex 1:** Final Report of the CVR, 2003, Vol. II, 1.1 *The Communist Party of Peru – Shining Path*, p. 13, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>9</sup> **Annex 5:** Final Report of the CVR, 2003, Vol. II, 1.4 *The Túpac Amaru Revolutionary Movement*, pp. 387, 389, 392, and 431 to 433. **Annex 6:** Final Report of the CVR, 2003, Vol. VII, 2.30 *The Disappearance of the Ashaninka Chief Alejandro Calderón (1989)*, 2.39 *Killing of Nine Inhabitants of Yumbatos, San Martín (1989)*, 2.54 *Abduction and Murder of David Ballón Vera (1992)*, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>10</sup> **Annex 7:** IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.LV/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Frame of Reference, para. 7, available at [www.cidh.oas.org/countryrep/Peru2000sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru2000sp/indice.htm).

<sup>11</sup> **Annex 7:** IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.LV/II.106, doc. 59 rev., June 2, 2000, Introduction, B. Reference Framework, para. 9, available at [www.cidh.oas.org/countryrep/Peru2000sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru2000sp/indice.htm).

<sup>12</sup> **Annex 8:** IACHR, Report No. 101/01, Case 10.247 and others, *Extrajudicial Executions and Forced Disappearances*, Peru, October 11, 2001, paras. 163 to 179, available at [www.cidh.oas.org/annualrep/2001sp/Peru10247.htm](http://www.cidh.oas.org/annualrep/2001sp/Peru10247.htm). **Annex 9:** IACHR, Report No. 57/99, Case 10.827, *Romer Morales Zegarra and others*; Case 10.984, *Carlos Vega Pizango*, Peru, April 13, 1999, paras. 28 to 44, available at [www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.827.htm](http://www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.827.htm). **Annex 10:** IACHR, Report No. 1/96, Case 10.559, *Julio Apfata Tañire Otavire and others*, Peru, March 1, 1996, section I, Background, available at [www.cidh.oas.org/annualrep/95span/cap.III.peru10.559.htm](http://www.cidh.oas.org/annualrep/95span/cap.III.peru10.559.htm). **Annex 11:** IACHR, Report No. 37/93, Case 10.563, *Guadalupe Ccalloccunto Olano*, Peru, October 7, 1993, section I, Background, available at [www.cidh.oas.org/annualrep/93span/cap.III.peru10.563.htm](http://www.cidh.oas.org/annualrep/93span/cap.III.peru10.563.htm).



mechanism to discourage the population from maintaining its sympathy toward, tolerance of, or coexistence with the subversive groups.”<sup>13</sup>

39. The CVR concluded that the main objectives of the forced disappearances were: (i) to obtain information about subversives and people under suspicion; (b) to eliminate subversives and their sympathizers with impunity; and (c) to intimidate the populace and force them to side with the security forces.<sup>14</sup> The periods when the greatest number of such incidents took place were the two years from 1983 to 1984 and the five-year period from 1989 to 1993. According to the CVR, although the second period “did not match the levels reached during 1983 and 1984, the use of forced disappearances as a way of eliminating members or suspected members of subversive organizations was much more systematic.”<sup>15</sup>

40. The CVR reported that the *modus operandi* of the state agents was:

the selection of the victim, arrest of the person, detention in a holding facility, subsequent transfer to another detention center, interrogation, torture, processing the information obtained, the decision to eliminate, physical elimination, disappearance of the victim’s remains, use of state resources. The common denominator throughout the process was the denial of the initial arrest and a refusal to provide any information about what had happened to the detainee.<sup>16</sup>

41. With reference to the investigations into complaints of forced disappearances committed during the internal armed conflict, the CVR concluded that “most of the cases were followed by a lack of action or timid and ineffective actions on the part of the judiciary and the Public Prosecution Service.”<sup>17</sup> According to the CVR, this context of impunity surrounding crimes committed by members of the security forces worsened after President Alberto Fujimori’s coup d’état of April 5, 1992, on account of “clear interference in the judiciary through massive dismissals of judges, temporary appointments, the creation of administrative agencies that were unconnected to the structure of the judicial system, and the lack of action on the part of the Constitutional Court.”<sup>18</sup>

42. In a January 1998 report, the United Nations Working Group on Enforced or Involuntary Disappearances noted that:

The vast majority of the 3,004 cases of disappearances reported in Peru occurred between 1983 and 1992, in the context of the Government’s struggle against terrorist organizations, particularly Shining Path. In late 1982, the armed forces and the police embarked on a counterinsurgency campaign and the armed forces received a broad margin of discretion in combating Shining Path and restoring law and order. Although most of the reported disappearances took place in areas of the country that were in a state of emergency and under military control, particularly the regions of Ayacucho, Huancavelica, San Martín, and Apurímac, disappearances also occurred in other parts of Peru (...).<sup>19</sup>

<sup>13</sup> **Annex 12:** Final Report of the CVR, Vol. VI, 1.2. *Forced Disappearances*, p. 85, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>14</sup> **Annex 12:** Final Report of the CVR, Vol. VI, 1.2. *Forced disappearances*, p. 70, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>15</sup> **Annex 12:** Final Report of the CVR, Vol. VI, 1.2. *Forced Disappearances*, p. 78, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>16</sup> **Annex 12:** Final Report of the CVR, Vol. VI, 1.2. *Forced Disappearances*, p. 84, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>17</sup> **Annex 12:** Final Report of the CVR, Vol. VI, 1.2. *Forced Disappearances*, p. 110, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>18</sup> **Annex 13:** Final Report of the CVR, Vol. VIII, *General Conclusions*, paras. 123-131, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>19</sup> **Annex 14.** Report of the Working Group on Enforced or Involuntary Disappearances, Document UN E/CN.4/1998/43, January 12, 1998, para. 297, available at [www2.ohchr.org/spanish/issues/disappear/annual.htm](http://www2.ohchr.org/spanish/issues/disappear/annual.htm).



43. In its March 1993 Report on the Situation of Human Rights in Peru, the IACHR noted that in the five years prior to its publication, it had adopted 43 final resolutions on petitions reporting the forced disappearance of a total of 106 victims. The IACHR also pointed out that between 1987 and 1990, Peru was the country in the world with the highest number of disappearances.<sup>20</sup>

44. In various merits reports, the IACHR found that between 1989 and 1993 “there existed in Peru a systematic and selective practice of forced disappearances, carried out by agents of the Peruvian State,” and it noted that “the official practice of forced disappearances was part of the ‘fight against subversion,’ although in many cases it harmed people who had nothing to do with the activities related to dissident groups.”<sup>21</sup> The IACHR further concluded that during the 1990s, forced disappearances “were not seriously investigated. In practice, those responsible enjoyed almost total impunity, since they were carrying out an official State plan.”<sup>22</sup> In some of these cases, the Commission reported that the perpetrators of the forced disappearances sought to avoid their responsibility by presenting “certificates of release” that were either falsified or obtained through coercion and torture. Thus, the Commission said that:

A variation [of forced disappearance] consisted of the authorities alleging that the victim had been released and even producing documents to show this, sometimes with a forgery of the victim’s signature, others with his or her real signature obtained under torture, when in fact the release had never taken place.<sup>23</sup>

45. Finally, the Inter-American Court of Human Rights has established that for several years, governmental policy in Peru favored the commission of targeted killings, forced disappearances, and torture of people suspected of belonging to the insurgent groups.<sup>24</sup>

## 2. Serious human rights violations in Cajatambo province during the internal armed conflict

46. According to the CVR’s Final Report, in 1985 Shining Path began carrying out armed incursions against the population of Cajatambo and the other mountainous provinces in the north of Lima department.<sup>25</sup> Beginning in 1987, Shining Path’s strategy in that region was to selectively annihilate authorities, attack police stations, sabotage public services, and murder local inhabitants who resisted their rules of conduct.<sup>26</sup> According to testimony documented by the CVR, Shining Path’s columns killed

<sup>20</sup> **Annex 15:** IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, Section I, Background, C. Human Rights Problems Identified by the Commission, paras. 16 and 17, available at [www.cidh.oas.org/countryrep/Peru93sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru93sp/indice.htm).

<sup>21</sup> **Annex 16:** IACHR, Report No. 51/99, Case 10,471, Anetro Castillo Pezo and others, Peru, April 13, 1999, para. 75, available at [www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.471.htm](http://www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.471.htm). Similarly, see also: Merits Reports Nos. 52/99, 53/99, 54/99, 55/99, 56/99, and 57/99, published by the IACHR in the year 1999 and available at [www.cidh.oas.org/casos/99sp.htm](http://www.cidh.oas.org/casos/99sp.htm).

<sup>22</sup> **Annex 17:** IACHR, Report No. 57/99, Case 10.827, Romer Morales Zegarra and others, and Case 10.984, Carlos Vega Pizango, Peru, April 13, 1999, para. 45, available at [www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.827.htm](http://www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.827.htm).

<sup>23</sup> **Annex 16:** IACHR, Report No. 51/99, Case 10.471, Anetro Castillo Pezo and others, Peru, April 13, 1999, para. 75. On April 13, 2000, the IACHR ruled on Case 10.670, which dealt with the forced disappearance of Messrs. Alcides, Julio César, and Abraham Sandoval Flores by members of the Army on January 25, 1990, in Coronel Portillo province, Ucayali department. During the processing of the case, the Peruvian State disputed the disappearance of the victims since, *inter alia*, the Sandoval Flores brothers had signed a “document of release.” In response, the IACHR concluded that the fact that the Army had release documents allegedly signed by the victims “cannot be sufficient evidence of that circumstance,” and it ratified the existence of a pattern of forced disappearances preceded by the signing of documents of that kind on behalf of the military authorities involved. See: IACHR, Report No. 43/00, Alcides Sandoval Flores and others, Peru, April 13, 2000, paras. 27 to 29, available at [www.cidh.oas.org/annualrep/99span/De%20Fondo/Peru10670.htm](http://www.cidh.oas.org/annualrep/99span/De%20Fondo/Peru10670.htm).

<sup>24</sup> I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paras. 83 and 84; *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 54.1; and *Case of Huilca Tecse v. Peru*, Judgment of March 3, 2005, Series C No. 21, para. 60.9.

<sup>25</sup> **Annex 17:** Final Report of the CVR, 2003, Vol. IV, Chapter 1, The Violence in the Regions, 1.6 Complementary Axes, pp. 470 to 472, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

dozens of civilians and police officers in Cajatambo between 1987 and 1992,<sup>27</sup> and most of those crimes were committed with excessive viciousness, with the victims' bodies displayed to the public.<sup>28</sup>

47. In response to Shining Path's growing presence in the northern provinces of Lima department, political and military control of that region was transferred to the Army for a lengthy period beginning in the early 1990s.<sup>29</sup> According to testimony documented by the CVR, between 1989 and 1992 the National Civil Police and the Army conducted counteroffensive operations in Cajatambo province, during which they arbitrarily arrested, tortured, and forcibly disappeared people accused of collaborating with Shining Path.<sup>30</sup> These testimonies indicate that between April 1991 and May 1992, at least three villagers were arrested by Army patrols in Nunumia, Gorgor district, and taken to the Cajatambo Countersubversive Base; since then, their whereabouts has remained unknown.<sup>31</sup>

#### D. Facts deemed proven by the Commission

##### 1. Jeremías Osorio Rivera's arrest and disappearance at the hands of members of the Peruvian Army

48. Jeremías Osorio Rivera was born on December 4, 1962, in Gorgor district, Cajatambo province, department of Lima.<sup>32</sup> His parents were Faustino Osorio de Salas and Juana Rivera Lozano, both deceased, and he has seven siblings: Alejandrina, Elena, Porfirio, Adelaida, Silvia, Mario, and Efraín Osorio Rivera.<sup>33</sup> In 1985 he entered a partnership with Santa Fe Gaytán Calderón, with whom he had the following children: Edith Laritza, Neyda Rocío, Vanesa, and Jeremías Osorio Gaytán.<sup>34</sup>

49. Mr. Osorio Rivera lived with his family and his mother in a hamlet located an hour's walk from the village of Cochas-Paca, in Gorgor district, where he worked his smallholding and raised and sold

...continuation

<sup>26</sup> **Annex 17:** Final Report of the CVR, 2003, Vol. IV, Chapter 1, The Violence in the Regions, *1.6 Complementary Axes*, pp. 473 to 476, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>27</sup> **Annex 17:** Final Report of the CVR, 2003, Vol. IV, Chapter 1, The Violence in the Regions, *1.6 Complementary Axes*, pp. 479 to 480, available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

<sup>28</sup> **Annex 18:** Final Report of the CVR, 2003, Annex IV, Cases and Victims Recorded by the CVR, Vol. XVII, *Cases in the Department of Lima reported to the CVR, Cajatambo Province*, pp. 128 to 133, available at [www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf](http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf).

<sup>29</sup> **Annex 19:** Supreme Decree No. 016-DE/SG, published in the official journal *El Peruano* on April 2, 1991. That decree extended the state of emergency in Lima department and its provinces for a period of sixty days. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year. Partially illegible document.

<sup>30</sup> **Annex 18:** Final Report of the CVR, 2003, Annex IV, Cases and Victims Recorded by the CVR, Vol. XVII, *Cases in the Department of Lima reported to the CVR, Cajatambo Province*, pp. 128 to 133, available at [www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf](http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf).

<sup>31</sup> Those individuals are the alleged victim Jeremías Osorio Rivera, Humberto Espinoza León, and Rodolfo Fabián Villareal Enríquez. See **Annex 18:** Final Report of the CVR, 2003, Annex IV, Cases and Victims Recorded by the CVR, Vol. XVII, *Cases in the Department of Lima reported to the CVR, Cajatambo Province*, pp. 131 to 133, available at [www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf](http://www.cverdad.org.pe/ifinal/pdf/Tomo%20-%20ANEXOS/PDFSAnexo4/LIMA.pdf).

<sup>32</sup> **Annex 19:** Verification Report of the Office of the People's Defender No. 5442-2006-OD/LIMA, Section I. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>33</sup> **Annex 19:** Verification Report of the Office of the People's Defender No. 5442-2006-OD/LIMA, Section VI, No. 1. **Annex 20:** Investigation statement given by Porfirio Osorio Rivera on October 18, 2004, to the office of the Specialized Provincial Prosecutor for Forced Disappearances, Extrajudicial Killings, and Exhumations of Clandestine Graves (hereinafter "Specialized Provincial Prosecutor's office"), p. 1. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>34</sup> **Annex 21:** Birth certificates of Edith Laritza, Neyda Rocío, Vanesa, and Jeremías Osorio Gaytán. **Annex 22:** Witness statement of Santa Fe Gaytán Calderón, given on July 7, 2006, to the Mixed Court of Cajatambo, case file No. 077-2005-P, p. 1. Documents enclosed with the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

livestock.<sup>35</sup> According to statements made by his neighbors and other friends, Jeremías Osorio was opposed to Shining Path's actions and used to participate in social events organized in his community against the insurgent group.<sup>36</sup>

50. On the morning of April 28, 1991, Jeremías Osorio Rivera went to Cochas-Paca to participate in a sporting event.<sup>37</sup> At the end of the day he was detained by soldiers from the Cajatambo Countersubversive Base, who were patrolling in the area. The arrest took place while he was fighting with his cousin Gudmer Tulio Zárate Osorio; they were both taken to the schoolhouse in Nunumia, where an Army patrol had set up a base on April 22, 1991.<sup>38</sup> The arrest was carried out under the aegis of the "Palmira Operating Plan," the stated purpose of which was to organize self-defense committees, conduct patrols, and capture members of irregular armed groups. In Cajatambo province this plan was led by the commanding officer of the Countersubversive Base, Lt. Juan Carlos César Tello Delgado, who was known by the assumed names "Andrés López Cárdenas" and "Conan."<sup>39</sup>

51. On April 29, 1991, Lt. Tello Delgado sent a radio message to the commanding officer of the 77th Armored Infantry Battalion, Lt. Col. Arnulfo Roncal Vargas, reporting the previous night's arrest. In the radio message Jeremías Osorio Rivera was described as "Comrade Gashpao," and was also reported to have been carrying explosives, dynamite capsules, and a National Police service revolver.<sup>40</sup> According to Lt. Tello Delgado's statements to the Peruvian judicial authorities, no record was entered of the confiscation of the revolver and explosives because they were unaware of how to proceed. On this point, he stated that "he [wasn't] trained to prepare records, statements, or other police documents; he

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<sup>35</sup> **Annex 23:** Investigation statement of Santa Fe Gaytán Calderón, given on November 19, 2004, to the Specialized Provincial Prosecutor's office, p. 1, in which she says that her husband "worked his smallholding and raised the animals we kept at home, then we would sell the lambs we raised to the villagers who came by." Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>36</sup> **Annex 24:** Testimony of Porfirio Osorio Rivera to the CVR, Testimony No. 100072, section I, Background. **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, "During Oral Proceedings," No. 2, containing the witness statement of Aquiles Román Atencio, a resident of Cochas-Paca, stating that "he had never seen [Jeremías Osorio Rivera] with weapons, and that on the contrary, he had organized against terrorism and taken the steps for the military base to be set up in Nunumia." Documents enclosed with the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>37</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 4, "Committal Proceedings," No. 5, and section 8, "Appraisal of the Evidence," No. 5.

<sup>38</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 8, "Appraisal of the Evidence," No. 1, and section 2, "Statement of the Accused," indicating that at 23:50 hrs on April 28, 1991, "there was an explosion; orders were given for the personnel to surround the locale where a social gathering was taking place, which led to the arrest of Jeremías Osorio Rivera and Gudmer Zárate Osorio, who were utterly intoxicated..."

<sup>39</sup> **Annex 26:** Witness statement of Arnulfo Roncal Vargas, given on September 22, 1993, to the Third Permanent Military Court of the Second Army Judicial District. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year. That document contains the following declaration:

In my capacity as Unit Chief of the 77th Armored Infantry Battalion and Political/Military Chief of Military Security Area No. 1 [...] we implemented the 'PALMIRA Plan of Operations,' which involved patrolling in various areas and capturing subversives in the area; Lt. CONAN conducted the operation in the COCHASPACAS zone from April 22 to May 1, 1991...

<sup>40</sup> **Annex 27:** Copy of radio message No. 628 of April 29, 1991, addressed to the 77th Armored Infantry Battalion. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year. The radio message contains the following text:

RPLY INFORMING SUP THAT (K) on 29 000 ABR 91 "CONAN" PATROL CAPTURED DS JEREMIAS OSORIO RIVERA (c) "GASHPAO" (K) IN POSSESSION OF A CAL 38 REVOLVER AND PRIMED EXPLOSIVE CHARGES (K) FIRED AND THREW AN EXPLOSIVE CAPSULE IN A SOCIAL GATHERING IN THE NUNUMIA COMMUNITY CENTER (K) REVOLVER BELONGS TO PNP-PG (K) FURTHER REPORTS TO FOLLOW (STOP).

handed the firearm over to his commanding officer, in exchange for a receipt, while the dynamite was destroyed [...].<sup>41</sup>

52. In the morning of April 29, 1991, Mr. Aquiles Román Atencio, a resident of Cochas-Paca, learned of Jeremías Osorio's arrest and asked the members of the patrol based in Nunumia what had happened. According to his statements, Lt. Juan Carlos Tello told him that Jeremías Osorio "was under arrest because he was a terrorist and was carrying a police officer's weapon."<sup>42</sup> On that same date, the victim's mother and brother, Ms. Juana Rivera Lozano and Mr. Porfirio Osorio Rivera, went to the army camp in Nunumia and sought the release of their loved one. That afternoon, Porfirio Osorio managed to speak briefly with Lt. Juan Carlos Tello, who refused him permission to see the detainee and told him that Jeremías Osorio "had committed a mistake and didn't need anyone to make inquiries." Mr. Porfirio Osorio remained on the premises until late that night, but was not allowed to communicate with his brother or to receive information about his situation. However, he was able to speak with a member of the patrol's cleaning personnel, who was wearing Jeremías Osorio's hat.<sup>43</sup>

53. On the morning of April 30, 1991, Gudmer Tulio Zárate Osorio was released by the Army patrol, without his signing a certificate of release or any other documents.<sup>44</sup> That same day, Mr. Porfirio Osorio and Ms. Santa Fe Gaytán, the victim's companion, tried to bring him breakfast but were not allowed to do so by the soldiers. When Lt. Juan Carlos Tello announced that the patrol would be withdrawing from the community center, Porfirio Osorio drafted a document certifying his brother's good conduct.<sup>45</sup> While he was trying to collect signatures from the local population supporting his contention that the victim had no ties to Shining Path, the soldiers withdrew from Nunumia, in the company of four civilians, and they took Jeremías Osorio with them.<sup>46</sup>

54. In his statements to the Peruvian judicial authorities, Lt. Juan Carlos Tello said that Jeremías Osorio was taken to the Cajatambo Countersubversive Base on horses loaned by local villagers, in a journey that took between 10 and 12 hours. According to the lieutenant's statements, the

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<sup>41</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section titled "Statement by the Accused."

<sup>42</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, "During the Oral Proceedings," No. 2.

<sup>43</sup> **Annex 24:** Testimony of Porfirio Osorio Rivera to the CVR, Testimony No. 100072, section II, Sequence of Events. **Annex 28:** Testimony of Juana Rivera Lozano to the CVR, Testimony No. 101262, section titled "Description of the Facts." **Annex 23:** Investigation statement of Santa Fe Gaytán Calderón, given on November 19, 2004, to the Specialized Provincial Prosecutor's office. **Annex 29:** Witness statement of Juana Rivera Lozano, given on December 19, 2005, to the Mixed Court of Cajatambo. Those documents were sent as an enclosure with the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>44</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 2, "Statement of the Accused," which reads that "on April 30, when Gudmer Tulio Zárate Osorio's state of intoxication had passed, he was released [...]." **Annex 30:** Investigation statement of Gudmer Tulio Zárate Osorio, given on December 21, 2004, to the Mixed Provincial Prosecution Office of Cajatambo, indicating that he was arrested for one night and then released "because I was no longer drunk and I signed no document."

<sup>45</sup> **Annex 31:** Untitled document dated April 30, 1991, containing signatures and voters' registration numbers of residents of the community of Cochas-Paca. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year. That document reads as follows:

We the undersigned, dignitaries and general population of the rural communities of the town of Cochas-Paca, Gorgor district, province of Cajatambo, which has been declared a red zone, hereby certify that the resident Geremias (sic) Osorio Ribera (sic), a member of this community whom we have known since childhood up to the present, during his time in this community has behaved acceptably, and is accepted by all the local residents and by the community itself; in addition, he was one of the leaders of the protests against terrorism in this community [...].

<sup>46</sup> **Annex 24:** Testimony of Porfirio Osorio Rivera to the CVR, Testimony No. 100072, section II, Sequence of Events. **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year. **Annex 31:** Untitled document dated April 30, 1991, containing signatures and voters' registration numbers of residents of the community of Cochas-Paca.

detainee was taken “with his hands bound to prevent him escaping, and with a hood on because that was standard procedure.”<sup>47</sup> Similarly, Porfirio Osorio Rivera and Santa Fe Gaytán Calderón claim to have seen Jeremías Osorio for the last time on the morning of April 30, 1991, his hands tied and a hood covering his face, as he was being taken by the Army patrol toward the Cajatambo Countersubversive Base.<sup>48</sup>

55. Ms. Juana Rivera Lozano was standing in front of the Nunumia community center as her son was forced to accompany the Army patrol. Seeing the conditions in which he was being taken and hearing comments telling her to say goodbye to Jeremías Osorio, she broke down and fainted.<sup>49</sup> Aquiles Román Atencio, a villager who also witnessed the events of the morning of April 29, 1991, said he was “aware that the people of Nunumia had issued a certificate of good conduct on behalf of Jeremías Osorio Rivera, but there were comments that as a result, [Lt. Juan Carlos Tello] had threatened them.”<sup>50</sup>

56. Following that incident, Porfirio Osorio was told by three of the four villagers who accompanied the Army patrol that they had “accompanied [his] brother as far as the place known as Shapil, where the lieutenant had told them to carry on toward Astobamba, while they headed for Cajatambo with his brother.” Mr. Porfirio Osorio stated that some villagers heard shouts coming from the Nunumia schoolhouse where his brother was being held, and that they also reported that his face had been injured. Porfirio Osorio reported that the civilians who accompanied the soldiers on April 30 remarked that Jeremías Osorio was limping and was forced to walk, and that the soldiers provided him with no food.<sup>51</sup>

57. On the morning of May 1, 1991, the victim’s siblings Porfirio and Silvia Osorio Rivera went to the Cajatambo Countersubversive Base, where they were told by a noncommissioned officer by the name of Mamani that Lt. Juan Carlos Tello was not present, and that no detainees had been brought there.<sup>52</sup> On May 2, Mr. Porfirio Osorio returned to the Cajatambo Base, where Lt. Juan Carlos Tello informed him that Jeremías Osorio had been released the previous day. When he insisted on additional information on his brother’s whereabouts, he was shown, by the officer in question, a copy of a radio message purportedly reporting Jeremías Osorio’s release.<sup>53</sup>

58. In the afternoon of May 2, 1991, Mr. Porfirio Osorio went to the homestead where his brother lived in Cochás-Paca, but the victim’s companion and children told him they had not seen him. On May 3, 1991, Jeremías Osorio’s family finally searched for him in likely places.<sup>54</sup> Given the lack of

<sup>47</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 2, “Statement of the Accused.” **Annex 33:** Document titled “Confrontation of the suspect, Andrés López Cárdenas, with the complainant, Porfirio Osorio Rivera” before the Provincial Mixed Court of Cajatambo, August 28, 1991, in which Juan Carlos César Tello states that “I did indeed order a balaclava to be placed on his head, as a procedure to be followed when detainees are transferred.”

<sup>48</sup> **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo, p. 1. **Annex 22:** Witness statement of Santa Fe Gaytán Calderón, given on July 7, 2006, to the Mixed Court of Cajatambo, case file No. 077-2005-P, p. 2.

<sup>49</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, “During the Oral Proceedings,” No. 1. **Annex 20:** Investigation statement of Porfirio Osorio Rivera, given on October 18, 2004, to the Specialized Provincial Prosecutor’s office.

<sup>50</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, “During the Oral Proceedings,” No. 2.

<sup>51</sup> **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo, pp. 4 to 6.

<sup>52</sup> **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo, p. 3.

<sup>53</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, “During the Oral Proceedings,” No. 2.

<sup>54</sup> **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo, p. 3. **Annex 22:** Witness statement of Santa Fe Gaytán Calderón, given on July 7, 2006, to the Mixed Court of Cajatambo, p. 2, in which she says that on May 2, 1991, “my brother-in-law arrived home and told me my partner had been released; but when he didn’t appear, he searched everywhere where he might have been until we gave up...”

information on his real whereabouts, Porfirio Osorio Rivera filed a criminal complaint against Lt. Juan Carlos Tello, the results of which are detailed below.

59. Although during the processing of this case the Peruvian State did not dispute the petitioners' narrative of the events of April 28 to May 1, 1991, the IACHR will now rule on the elements that enable it to reasonably conclude that Jeremías Osorio Rivera disappeared while he was in the custody of soldiers from the Cajatambo Countersubversive Base.

60. In the judicial proceedings initiated as a result of the complaints filed by Jeremías Osorio's family, the sole defendant, Lt. Juan Carlos Tello, maintained that the victim was released on May 1, 1991, in accordance with orders given by Lt. Col. Arnulfo Roncal Vargas, his superior in the chain of command. The records of the various trials conducted since May 1991 indicate that in 1989, Jeremías Osorio Rivera was questioned by the Antiterrorism Directorate (DIRCOTE) and that two police reports on him existed: 056-DIRCOTE of November 12, 1989, and 047-D3-DIRCOTE of April 4, 1991.<sup>55</sup> Those reports accused him of collaborating with the Shining Path insurgent group and referred to him by the alias "Comrade Gashpao." The same alias was used in radio message No. 628 of April 29, 1991, in which Juan Carlos Tello informed the 77th Armored Infantry Battalion that Jeremías Osorio had been arrested and weaponry purportedly in his possession had been seized.<sup>56</sup> Accordingly, in its judgment issued on December 17, 2008, in criminal proceedings that remain ongoing, the National Criminal Chamber established that:

[...] both the accused [Juan Carlos Tello] and the witness Arnulfo Roncal Vargas considered the victim to be a subversive criminal [...]. He was even assigned the alias 'Gashpao'; it was known that this coincided with the alias used in the police reports drawn up in connection with the victim; and it was known that the seized firearm belonged to a police officer; consequently, the procedures for the arrest of suspected subversive elements had to be followed [...] in other words, he had to be brought before the police authorities for the investigation to proceed. This did not happen, even though the command post ordered the witness Arnulfo Roncal Vargas – per radio message No. 223, which appears on p. 2573 – to take the relevant steps, since the victim had participated in the murder of police personnel in Huancapón.<sup>57</sup>

61. In their preliminary statements and during the oral proceedings, the officers Juan Carlos Tello and Arnulfo Roncal Vargas held that the release of Jeremías Osorio Rivera was accredited, *inter alia*, by means of a document titled "certificate of release," dated May 1, 1991, which contains the following text and graphical elements:

THIS CERTIFIES THAT MR. OSORIO RIVERA JEREMIAS; WITH VOTERS' NUMBER 15200671, BORN IN THE PROVINCE OF CAJATAMBO – DEPARTMENT OF LIMA, WAS RELEASED ON MAY 1, 1991, AT 7:00 A.M., AND WAS NOT SUBJECTED TO ANY KIND OF PHYSICAL OR PSYCHOLOGICAL MISTREATMENT. THIS CERTIFICATE IS ISSUED FOR ALL PERTINENT PURPOSES.

Cajatambo, May 1, 1991.

[The lower part of the document contains a fingerprint and the name JEREMÍAS OSORIO RIVERA, along with a signature.]<sup>58</sup>

<sup>55</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 3, "Preliminary Investigation," No. 11, and section 5, "During the Oral Proceedings," No. 23, stating that report No. 298-DIRCOTE PNP-OFINTE-UNIBAS was annexed to the proceedings, "wherein it is established that Fermín Tolentino Román, Patricio Chavarría Celestino, Crisólogo Chavarría Rojas and Jeremías Osorio Rivera have criminal records for terrorist offenses."

<sup>56</sup> **Annex 26:** Witness statement of Arnulfo Roncal Vargas, given on September 22, 1993, to the Third Permanent Military Court of the Second Army Judicial District.

<sup>57</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 8, "Appraisal of the Evidence," No. 10.

<sup>58</sup> **Annex 34:** Document titled "Certificate of Release." Annex to the initial petition received by the IACHR on November 20, 1997.

62. After carrying out the expert analysis of this document on December 16, 1991, the graphology specialists of the National Police of Peru concluded that the signature appearing on it “came from the hand of [Jeremías Osorio] because it displays a series of graphic characteristics consistent with the signature that appears on the electoral roll.” Regarding the fingerprint that appears on the lower part of document, they concluded that “it is not from the right index finger, but it could be from another digit.”<sup>59</sup> On the evidentiary value of the expert analysis conducted by the National Police on December 16, 1991, the Supreme Court of Justice ruled as follows in its resolution of June 24, 2010:

Upon its assessment by the experts in the cross-examination, they stated that to perform the comparison they only had the entry in the electoral roll that was sent from Cajatambo, which appears on p. 2494, a document that is eleven years old [...] contradicting what they themselves said in the oral proceedings, when they stated that to perform the expert analysis they needed contemporaneous signatures, taken as meaning two years earlier or later. **Four:** It is therefore not a suitable document for performing a comparison of signatures and fingerprints such as the one that was carried out, since the time that has gone by could have affected the clarity of the samples in question, which would prevent a sound conclusion from being reached; that circumstance allows us to have valid doubts regarding the certainty of the scientific test [...].<sup>60</sup>

63. The Commission draws attention to the fact that when the arrest took place on April 28, 1991, the members of the Army patrol guarding Jeremías Osorio Rivera prepared no record of his capture, of the search of his person, or of the confiscated items. The IACHR notes that the judicial authorities currently working on the criminal proceedings intended to cast light on the incident have established that the whereabouts of Jeremías Osorio has remained unknown since he was detained by personnel from the Cajatambo Countersubversive Base. In its resolution of June 24, 2010, the Supreme Court of Justice found it highly unlikely that the victim could have been released on May 1, 1991, only to disappear voluntarily immediately after.<sup>61</sup>

64. According to statements given by the residents of Cochas-Paca and by Lt. Juan Carlos Tello, on the date of the incident there was a National Police station in Gorgor district,<sup>62</sup> a few hours from the community of Nunumia where Jeremías Osorio was initially taken into custody. The statements made by Mr. Simeón Refuerto Roque, who was the mayor of Cajatambo in 1991, indicate that the province's Countersubversive Base was a few meters away from an office of the prosecution service,<sup>63</sup> which underscores the irregularity of the actions of the soldiers who took Jeremías Osorio to a military facility, instead of handing him over to the competent authorities. It should be noted that the soldiers who arrived at the Countersubversive Base between April 30 and May 1, 1991, prepared no written record of the

<sup>59</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, “During the Oral Proceedings,” No. 10, “Ratification of the expert graphology technicians Luis Gerardo Montesinos Aguilar and César Melesio Aliaga Rojas.”

<sup>60</sup> **Annex 35:** Resolution of the Temporary Criminal Chamber of the Supreme Court of Justice of June 24, 2010, case file No. 1101-2009, whereas clauses three and four. Annex to the petitioners' communication of November 25, 2010, received by the IACHR on December 8 of that year.

<sup>61</sup> **Annex 35:** Resolution of the Temporary Criminal Chamber of the Supreme Court of Justice of June 24, 2010, case file No. 1101-2009, whereas clauses three and four.

<sup>62</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 2, “Statement of the Accused,” recording Juan Carlos Tello's declaration that “he maintains that he did not hand the detainees over to the police station in Gorgor, which was the closest, because he had not been ordered by his commanding officer to do so”; and section 5, “During the Oral Proceedings,” No. 2, containing the witness statement of the villager Aquiles Román Atencio, stating that “in Cajatambo the prosecutor's office is about a hundred or a hundred and fifty meters from the military base, and that there was a police station in Gorgor district, which is two and a half hours away from Cochas Paca.”

<sup>63</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 5, “During the Oral Proceedings,” No. 6, in which Mr. Simeón Refuerto Roque “says that the Cajatambo Prosecutor's office was located 400 meters from the military base...”



detainee's admission;<sup>64</sup> they merely drew up a "certificate of release," which contains no signature of any military or judicial authority or of any other person who could certify the veracity of his release.

65. The IACHR notes that the circumstances surrounding the arrest and transfer of Jeremías Osorio Rivera and the way in which information on his whereabouts was released are consistent with the *modus operandi* for forced disappearances used by the security forces during the internal armed conflict in Peru. As explained in section C.1 of this report, those practices were used systematically, between 1989 and 1993 in particular, against people suspected of belonging to or collaborating with insurgent groups. The soldiers who arrested Jeremías Osorio not only suspected him of belonging to Shining Path, they also accused him of having participated in murder, of carrying a police-issue firearm, and of possessing and detonating explosives during a celebration in the Nunumia community center on April 28, 1991.

66. The sequence of irregularities described in paragraphs 63 and 64 *supra*, the way in which the victim was transferred to the Cajatambo Countersubversive Base on April 30, 1991, the constant refusals to provide information on his situation in spite of his family's appeals, and the general context surrounding those incidents are sufficient for the IACHR to reasonably conclude that Jeremías Osorio Rivera disappeared while in the custody of members of the Peruvian Army who were acting under the orders of Lt. Juan Carlos César Tello Delgado.

67. In light of all the above, the IACHR considers it has been proven that members of an Army patrol from the Cajatambo Countersubversive Base detained Jeremías Osorio Rivera on April 28, 1991, and proceeded to make him disappear between April 30 and May 1 of that year. In addition, the Commission concludes it has been proven that those members of the military concealed the information on the victim's real whereabouts and then released false information, in an attempt to evade responsibility. Finally, the IACHR believes it has been proven that by forcing him to travel for several hours on April 30, 1991, with his hands tied and his head covered by a hood, and with grounded fears for his life, Jeremías Osorio Rivera was the victim of intense physical and mental suffering, deliberately inflicted on him by personnel of the Cajatambo Countersubversive Base.

## **2. Judicial proceedings in connection with the disappearance of Jeremías Osorio Rivera**

68. This section sets out the different actions pursued by the various agencies of the civilian and military justice systems since Jeremías Osorio Rivera's disappearance. The IACHR notes that it does not have complete copies of the corresponding legal case files, in spite of having asked the Peruvian State and the petitioners to provide them on July 29, 2011.<sup>65</sup> With the exception of the prosecutorial accusation of October 30, 2007, and the judgments handed down by the National Criminal Chamber on December 17, 2008, and by the Supreme Court of Justice on June 24, 2010, copies of which were provided by both parties, the documents referred to in this section came exclusively from the petitioners as enclosures with their communication of November 25, 2010, which was received by the IACHR on December 8 of that year.

### **(a) The criminal proceedings before the Provincial Prosecutor and Provincial Court of Cajatambo between May 1991 and July 1992 (case file No. 24-91)**

69. According to the statements made by Porfirio Osorio Rivera, on May 3, 1991, he went to the office of the Provincial Prosecutor of Cajatambo to file a complaint against Lt. Juan Carlos Tello, who

<sup>64</sup> **Annex 25:** Judgment of December 17, 2008, issued by the National Criminal Chamber in the criminal prosecution of Juan Carlos César Tello Delgado, case file No. 554-07, section 2, "Statement of the Accused," in which Juan Carlos Tello states that "upon arriving in Cajatambo he housed the victim in a room on the base; he did not record his admission because that is a police procedure and he was not used to carrying out arrests or interventions..."

<sup>65</sup> **Annex 36: (a)** Note of July 29, 2011, from the IACHR to the Peruvian State; **(b)** Note of July 29, 2011, from the IACHR to the petitioners.

at that time was known by the alias “Conan.” Mr. Porfirio Osorio claims that the complaint was not finalized since the lieutenant appeared at the Cajatambo Prosecutor’s office on that date and threatened to “report [him] as a terrorist to the Army’s 8th Armored Division.”<sup>66</sup>

70. On May 9, 1991, Porfirio Osorio Rivera returned to the prosecutor’s office in Cajatambo and filed a criminal complaint for the offense of forced disappearance, as set out at that time in Article 323 of the Criminal Code.<sup>67</sup> On May 17, 1991, he made a new filing, requesting the expansion of the complaint to cover the crimes of abduction and aggravated homicide.<sup>68</sup> On May 24, 1991, the Provincial Prosecutor ordered the transfer of the proceedings to the military justice system, in favor of which he declined jurisdiction so that the alleged disappearance of Jeremías Osorio could be investigated under the terms of Law No. 23214 (Code of Military Justice).<sup>69</sup> Mr. Porfirio Osorio filed a complaint remedy against that decision on May 27, 1991,<sup>70</sup> which was resolved in his favor on June 20 of that year by the Second Senior Prosecutor of Callao, who ordered the Provincial Prosecutor of Cajatambo to continue with the investigations through the regular justice system.<sup>71</sup>

71. On June 28, 1991, the Mixed Provincial Prosecution Office of Cajatambo formally filed criminal charges against “Andrés López Cárdenas,” the pseudonym used by Lt. Juan Carlos César Tello Delgado, for the crimes of violating personal liberty through abduction and aggravated homicide.<sup>72</sup> On July 10, 1991, the Mixed Court of Cajatambo ordered the commencement of criminal committal proceedings exclusively for the crime of violating personal liberty and also ordered that statements be taken from the defendant, from Porfirio Osorio Rivera, and from the witness Gudmer Tulio Zárate, and that a reconstruction of the facts be performed.<sup>73</sup> The copy of case file No. 24-91 presented to the IACHR does not indicate that the last two formalities were carried out.

72. In the committal commencement deed of July 10, 1991, the complaint was ordered to be returned as regards the crime of homicide, because the Provincial Prosecutor had neglected to include an explanation of how it was perpetrated and evidence of the *corpus delicti*.<sup>74</sup>

73. In a written submission dated August 13, 1991, Porfirio Osorio requested an on-site inspection of the community center where his brother was held, the cross-examination of the accused, and the taking of statements from Gudmer Tulio Zárate and other witnesses.<sup>75</sup> On August 26, 1991, the

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<sup>66</sup> **Annex 32:** Preventive statement of Porfirio Osorio Rivera, given on July 7, 2006, to the Mixed Court of Cajatambo, p. 4.

<sup>67</sup> **Annex 37:** Criminal complaint lodged on May 9, 1991, by Porfirio Osorio Rivera with the Mixed Provincial Prosecution Office of Cajatambo, dated May 7, 1991.

<sup>68</sup> **Annex 38:** Complaint expansion document of May 17, 1991, addressed to the Provincial Prosecutor of Cajatambo and signed by Porfirio Osorio Rivera.

<sup>69</sup> **Annex 39:** Resolution of the Mixed Provincial Prosecution Office of Cajatambo of May 24, 1991, stating that “the defendant is a serving officer of the Peruvian Army and when the facts referred to in the complaint were committed, he was serving as the chief of the Cajatambo Countersubversive Military Base; consequently, the investigation must be carried out under the terms of Law No. 23214 (Code of Military Justice)...”

<sup>70</sup> **Annex 40:** Complaint remedy addressed to the Provincial Prosecutor of the province of Cajatambo, registered as received on May 28, 1991.

<sup>71</sup> **Annex 41:** Resolution of the Superior Prosecutor of Callao of June 20, 1991, which “ruled GROUNDED the complaint lodged by the aforesaid complainant against Provincial Prosecutor Julio César Casma Angulo for having resolved to refer the entire proceedings to the military justice system...”

<sup>72</sup> **Annex 42:** First page of the criminal complaint of June 28, 1991, against “Andrés López Cárdenas,” filed before the Committal Judge of Cajatambo by the Provincial Prosecutor of Cajatambo.

<sup>73</sup> **Annex 43:** Committal commencement deed issued by the Mixed Court of Cajatambo on July 10, 1991, case file No. 24-91.

<sup>74</sup> **Annex 43:** Committal commencement deed issued by the Mixed Court of Cajatambo on July 10, 1991, case file No. 24-91.

<sup>75</sup> **Annex 44:** Submission from Mr. Porfirio Osorio to the Committal Judge of Cajatambo, dated August 13, 1991. Partially legible document.

Committal Judge of Cajatambo ordered that the on-site inspection be carried out, for which he asked the National Police to provide security guarantees stated that “the complainant [must] provide transportation.”<sup>76</sup> On September 23, 1991, the Provincial Prosecutor of Cajatambo asked the judge to extend the committal proceedings for one additional month, in order to carry out the on-site inspection, “take witness statements from Gudmer Tulio Zárate Osorio and Lorenzo Tolentino, notifying them in accordance with the law and of the penalties applicable for noncompliance.”<sup>77</sup>

74. On October 15, 1991, the Committal Judge of Cajatambo gave an order for the committal proceedings to be expanded and “for an on-site inspection to be performed at the Nunumia community center, Gorgor district, on the 30th day of the instant month at 10:00 a.m. [...] with transportation to be provided by the interested party...”<sup>78</sup> In a communication dated December 6, 1991, addressed to the Committal Judge of Cajatambo, the complainant Porfirio Osorio Rivera stated:

Since the formality of the on-site inspection that you ordered for October 30, 1991, was not performed; for the reason, as you told me, that the court personnel was on strike; although I fulfilled my part by bringing 20 horses, which represented a major outlay to the detriment of my scant resources. I request that your office indicate a new date and time for the on-site inspection formality under the responsibility [...].<sup>79</sup>

75. On January 13, 1992, the Mixed Provincial Prosecutor of Cajatambo issued a resolution noting that the Cajatambo judge was absent from his court, and that there was no official to replace him.<sup>80</sup> Again, on February 3, 1992, Mr. Porfirio Osorio reiterated his request that the Court of Cajatambo expand the complaint previously filed with the prosecutor’s office on May 17, 1991, to include the crime of forced disappearance as defined in Article 323 of the Criminal Code.<sup>81</sup>

76. On February 10, 1992, the Mixed Provincial Prosecution Office of Cajatambo issued an opinion stating that there was insufficient evidence pointing to the responsibility of Juan Carlos Tello in the crime against personal liberty.<sup>82</sup> On March 6, 1992, the Mixed Court of Cajatambo ordered the expansion of the criminal proceedings to include the crime of forced disappearance.<sup>83</sup> On May 4, 1992, Mr. Porfirio Osorio Rivera again asked the judge of Cajatambo to summon Gudmer Tulio Osorio, Aquiles Román Atencio, Patricio Chavarría Celestino, Lorenzo Tolentino Román, and Jorge Húngaro Atencio to appear as witnesses; however, the copies of the case file in the possession of the IACHR do not indicate that those formalities were ever carried out.

77. On June 12, 1991, the Mixed Court of Cajatambo resolved to shelve the proceedings for the crime of forced disappearance, in accordance with the opinion of the Provincial Prosecutor that Article 323 of the Criminal Code had been repealed by Decree Law No. 25475.<sup>84</sup> Regarding the crime of

<sup>76</sup> **Annex 45:** Resolution of the Committal Judge of Cajatambo, dated August 26, 1991, case file No. 24-91.

<sup>77</sup> **Annex 46:** Ruling No. 92-91-MP-FPMC issued by the Provincial Prosecutor of Cajatambo on September 23, 1991, case file No. 24-91.

<sup>78</sup> **Annex 47:** Resolution issued by the Committal Judge of Cajatambo on October 15, 1991, case file No. 24-91.

<sup>79</sup> **Annex 48:** Document dated December 6, 1991, signed by Porfirio Osorio Rivera and addressed to the Committal Judge of Cajatambo.

<sup>80</sup> **Annex 49:** Ruling No. 02-92-MP-FPMC by the Mixed Provincial Prosecution Office of Cajatambo, issued on January 13, 1992, case file No. 24-91.

<sup>81</sup> **Annex 50:** Document dated February 3, 1992, signed by Porfirio Osorio Rivera and addressed to the Provincial Court of Cajatambo.

<sup>82</sup> **Annex 51:** Ruling No. 11-92-MP-FPMC by the Mixed Provincial Prosecution Office of Cajatambo, issued on February 10, 1992, case file No. 24-91.

<sup>83</sup> **Annex 52:** Resolution of the Committal Judge of Cajatambo, dated March 6, 1991, case file No. 24-91.

<sup>84</sup> **Annex 53:** Resolution of the Mixed Court of Cajatambo, dated June 12, 1992, case file No. 24-91, stating that “with the repeal of Article 323 of Legislative Decree No. 635, by No. 22 of Decree Law No. 25475, this committal proceeding, for the crime under investigation, is to be irrevocably archived...” Although Decree Law No. 25475 “established punishments for the crime of terrorism and procedures for its investigation, committal proceedings, and prosecution”, its Article 22 “repealed Chapter II of Title  
Continues...

aggravated homicide, on June 30, 1992, the Committal Judge of Cajatambo concluded that “there were no grounds for opening committal proceedings against Andrés López Cardenas [and ordered] the continuation of the investigation, against such persons as may be responsible, should the crime of homicide be established...”<sup>85</sup> On July 2, 1991, the Provincial Prosecutor of Cajatambo filed an appeal remedy against the resolution denying the initiation of committal proceedings,<sup>86</sup> but that appeal was never resolved because, as explained in the following paragraph, the court declined jurisdiction.

78. In parallel to the criminal trial before the Provincial Court of Cajatambo, case file No. 24-91, Lt. Juan Carlos Tello Delgado faced prosecution by the Third Permanent Military Court of Lima, where criminal committal proceedings (case file No. 859-92) were opened on June 11, 1992, for the crimes of disappearance, abduction, and homicide.<sup>87</sup> On that same date, the Permanent Court-Martial of the Second Army Judicial District (hereinafter “the Permanent Court-Martial”) instructed the Mixed Court of Cajatambo to recuse itself from hearing the criminal proceedings against Juan Carlos Tello.<sup>88</sup> As a result of the jurisdiction dispute, on July 22, 1992, the Cajatambo Court declined jurisdiction to the military justice system and referred the proceedings to the Third Permanent Military Court of Lima.<sup>89</sup>

79. The petitioners claim that in addition to the complaint lodged with the Mixed Provincial Prosecutor of Cajatambo, Mr. Porfirio Osorio lodged a complaint with the Attorney General of the Nation on May 7, 1991. According to their narrative, that complaint was later referred to the Special Prosecutor at the Office of the People’s Defender and Human Rights, but that the latter agency pursued no investigations. Similarly, the information submitted indicates that Porfirio Osorio requested the intervention of the Constituent Democratic Congress’s Human Rights and Peace Commission, in response to which its chair asked the Attorney General of the Nation to take the appropriate steps and served documents on various agencies of the armed forces and of the Public Prosecution Service.<sup>90</sup>

**(b) The criminal proceedings before the military courts (case file No. 859-92)**

80. On November 25, 1992, the Permanent Court-Martial referred case file No. 24-91 to the Third Permanent Military Court of Lima for its joinder with case file No. 859-92.<sup>91</sup> On July 2, 1993, a witness statement was taken from Porfirio Osorio Rivera<sup>92</sup> and, on July 4, 1993, one was taken from the defendant.<sup>93</sup> The court also received a photocopy of radio messages sent by the defendant to his seniors between April 28 and May 1, 1991, letters signed by residents of different provinces in the north of Lima department endorsing his character, as well as other documents.

81. After pursuing these formalities, on November 30, 1993, the Third Permanent Military Court of Lima issued final report No. 019-93/erJMPL-2daZJE, finding that:

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...continuation

XIV of the Criminal Code, covering Articles 319 to 324 of that legislation [...]” See: **Annex 54**. Article 22 of Decree Law No. 25475 of May 5, 1992, available on the web site of the Congress of the Republic of Peru at [www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/25475.pdf).

<sup>85</sup> **Annex 55**: Resolution of the Committal Judge of Cajatambo, dated June 11, 1992, denying commencement of committal proceedings, case file No. 24-91.

<sup>86</sup> **Annex 56**: Appeal remedy presented by the Provincial Prosecutor of Cajatambo on July 2, 1992, against the deed denying the opening of committal proceedings of June 11, 1992, case file No. 24-91.

<sup>87</sup> **Annex 57**: Resolution of the Permanent Court-Martial of the Second Army Judicial District, dated June 11, 1992.

<sup>88</sup> **Annex 58**: Document No. 619-92/Sec/2daZJE issued by the Permanent Court-Martial of the Second Army Judicial District on June 11, 1992.

<sup>89</sup> **Annex 59**: Resolution of the Mixed Court of Cajatambo, dated July 22, 1992, case file No. 24-91.

<sup>90</sup> **Annex 60**: Document No. 571-93-DD.HH/CCD, dated August 2, 1993.

<sup>91</sup> **Annex 61**: Resolution of the Permanent Court-Martial, dated November 25, 1992.

<sup>92</sup> **Annex 62**: Witness statement of Mr. Porfirio Osorio Rivera, given on July 2, 1993.

<sup>93</sup> **Annex 63**: Statement to the investigation of Juan Carlos César Tello Delgado, given on July 4, 1993.

It having been established in the proceedings that Infantry Lieutenant Tello Delgado Juan acted in accordance with the orders of his superiors by detaining two civilians as suspected criminal terrorists, found a revolver and dynamite in the possession of one of them (Jeremías Osorio Rivera), resolved to take him to the Countersubversive Base and inform his commanding officer, who ordered him to release the detainee, for which he had him sign a document on which he left his fingerprint, but that this took place in the absence of a local authority to confirm the release of Jeremías Osorio Rivera in accordance with the procedures and provisions established in Directive No. 01-SRM/K-6/DDHH, this court is of the opinion that the crime of abuse of authority as determined in Article 179 *et seq.* of the Code of Military Justice did not exist since he did not exceed his authority, was in an emergency area, and was on active service; Article 152 of the Criminal Code does not apply according to Article 744 of the Code of Military Justice because it reads “in which he deprives another of his personal liberty” but specifying without the right to do so. The truth is that the lieutenant performed a service task, was in an emergency area, and was the chief of a countersubversive base in Cajatambo, which gave him the right to carry out operations of this kind and inform his superiors, for which reason he was released. Thus, no responsibility whatsoever has been proven on the part of the lieutenant...<sup>94</sup>

82. In spite of this opinion from the Third Military Court of Lima, an auditor’s report was issued on February 2, 1994, in which the Army’s judicial specialist requested that additional formalities be performed, including, most relevantly, (i) taking the witness statement of Gudmer Tulio Zárate Osorio, (ii) taking testimony from the members of the Army patrol commanded by Lt. Juan Carlos Tello on April 28, 1991, and (iii) the expansion of the defendant’s statements to include an explanation of the result of the investigations carried out during the arrest of Jeremías Osorio, indicating whether there was any written record of those investigations and specifying the names of the people who witnessed the purported release of the detainee in order for statements to be taken.<sup>95</sup> Accordingly, on February 7, 1994, the Permanent Court-Martial extended the period of the committal proceedings for one additional month.<sup>96</sup> However, the record before the IACHR contains no documents indicating that the formalities identified as (i) and (ii) were carried out; in contrast, the expanded statement of Juan Carlos Tello Delgado was taken on May 23, 1994. The relevant extracts of that statement are transcribed below:

Asked to indicate the result of the investigations carried out in connection with the detained civilian JEREMIAS OSORIO RIVERA and whether there was a written record, HE REPLIED: The result of the investigations is a question that must be answered by my unit chief, Infantry Lt. Col. Arnulfo Roncal Vargas, since it was he who ordered me to release the civilian Jeremías Osorio Rivera and, as written evidence, I herewith submit a photocopy of document No. 036/ALC, dated May 2, 1991, which my commanding officer received on May 6, 1991 [...].<sup>97</sup>

Asked to indicate the time and place where the release of the civilian Jeremías Osorio Rivera took place, and who witnessed that event, HE REPLIED: It was at 7:00 a.m. on May 1, 1991, at the Cajatambo Countersubversive Base; I alone was present since my patrol was resting and the remaining personnel had gone to fetch firewood to prepare the meal.<sup>98</sup>

83. On May 23, 1994, the Third Court issued a document requesting the appearance of Infantry Lieutenant Colonel Arnulfo Roncal Vargas, in order for him to expand his statement given in

<sup>94</sup> **Annex 64:** First page of final report No. 019-93/3erJMPL-2daZJE, issued by the Third Permanent Military Court on November 30, 1993. Partially illegible document.

<sup>95</sup> **Annex 65:** Auditors’ ruling No. 108-94 of February 2, 1994.

<sup>96</sup> **Annex 66:** Resolution of the Permanent Court-Martial, dated February 7, 1994.

<sup>97</sup> According to the information in the IACHR’s possession, the document refers to a record of the handing over, to the 77th Armored Infantry Battalion, of a weapon allegedly confiscated from Mr. Jeremías Osorio Rivera. See: **Annex 67:** Document No. 036/ALC of May 2, 1991, addressed to “Lt. Col. OIC of BIB No. 77 – RIMAC” and signed by the chief of the Cajatambo Countersubversive Base, “Andrés López Cárdenas.”

<sup>98</sup> **Annex 68:** Expansion of statement to the investigation given by Infantry Captain of the Peruvian Army Tello Delgado Juan on May 23, 1994, to the Permanent Military Judge, Lt. Col. Pablo J. E. Riveros Valderrama.

proceedings No. 859-92.<sup>99</sup> The IACHR finds no documents in the judicial case file indicating the performance of that formality or of any other until January 18, 1995. On that date, a second auditor's ruling was adopted, in favor of the dismissal of the proceedings on the grounds that "the committal phase has not proven the existence of the alleged crimes; that Lt. Tello Delgado acted in accordance with his service duties [...] the record contains no reliable proof of that the crimes examined were committed..."<sup>100</sup>

84. On February 7, 1995, the Permanent Court-Martial ordered the dismissal of the proceedings and their referral to the military prosecutor,<sup>101</sup> who issued prosecutorial opinion No. 119-95 on April 19, 1995, stating that "the non-commission [of the alleged crime] and the absence of responsibility of the accused have been proven [...]"<sup>102</sup> Following the referral of the proceedings to the Supreme Military Justice Council, it adopted a final decision on February 7, 1996, confirming the deed of dismissal and ordering the proceedings sent to the archive.<sup>103</sup>

**(c) The criminal proceedings initiated before the regular courts in 2004**

85. On June 14, 2004, Porfirio Osorio Rivera filed a fresh criminal complaint with the Specialized Prosecutor for Forced Disappearances, Extrajudicial Killings, and Exhumation of Clandestine Graves of Lima (hereinafter "the Specialized Prosecutor of Lima"), seeking the resolution of his brother's forced disappearance.<sup>104</sup> On June 25, 2004, the Specialized Prosecutor requested the Supreme Military Justice Council to forward the proceedings in case file No. 850-92.<sup>105</sup> On June 8, 2005, the Specialized Prosecutor of Lima declined jurisdiction in favor of the Mixed Provincial Prosecution Office of Cajatambo, attached to the Huaura Judicial District.<sup>106</sup>

86. On October 26, 2005, the Mixed Provincial Prosecution Office of Cajatambo formally filed criminal charges against Juan Carlos Tello for crimes against humanity, in the form of forced disappearance, and for crimes against personal liberty, in the form of abduction, with respect to Jeremías Osorio Rivera.<sup>107</sup> On November 10, 2005, the Mixed Court of Cajatambo decided to open committal proceedings against the defendant for the crimes listed in the prosecutorial complaint.<sup>108</sup> At the request of the injured party, the proceedings were referred to the Supraprovincial Criminal Chamber for cases of serious human rights violations, which awarded jurisdiction to the Fourth Supraprovincial Criminal Court.

87. At the end of the investigation stage, the Second National Superior Criminal Prosecutor filed charges against Juan Carlos Tello for crimes against humanity / forced disappearance, requesting a prison term of 20 years and the sum of fifty thousand new soles as civil redress.<sup>109</sup> On April 29, 2008, the National Criminal Chamber ordered the commencement of the trial and ruled that grounds existed for

<sup>99</sup> **Annex 69:** Document No. 834-94/3JMP-2da.ZJE of May 23, 1994, addressed to "Army Colonel, Director of the School of Psychological Operations – CGE," requesting "the attendance of the senior officer indicated."

<sup>100</sup> **Annex 70:** Auditors' ruling No. 260-95 of January 18, 1995. Partially illegible document.

<sup>101</sup> **Annex 71:** Dismissal resolution issued by the Permanent Court-Martial of the Second Army Judicial District on February 7, 1995.

<sup>102</sup> **Annex 72:** Prosecutor's report No. 119-95, issued on April 19, 1995, by Military Prosecutor Lt. Col. Daniel Velásquez Sabatti.

<sup>103</sup> **Annex 73:** Resolution of the Supreme Military Justice Council of February 7, 1996.

<sup>104</sup> **Annex 74:** Complaint lodged by Porfirio Osorio Rivera with the Specialized Prosecutor of Lima on June 14, 2004.

<sup>105</sup> **Annex 75:** Document from the Specialized Prosecutor of Lima, dated June 25, 2004, addressed to the Supreme Military Justice Council.

<sup>106</sup> **Annex 76:** Resolution declining jurisdiction of June 8, 2005, issued by the Specialized Prosecutor of Lima.

<sup>107</sup> **Annex 77:** Criminal complaint No. 109-2005-MP-FPM-Cajatambo, dated October 26, 2005.

<sup>108</sup> **Annex 78:** Resolution issued by the Mixed Court of Cajatambo on November 10, 2005, case file No. 077-2005-P.

<sup>109</sup> **Annex 79:** Ruling No. 119-2007-2FSPN-MP-FN of October 30, 2007. Annex to the petitioners' communication of February 19, 2010, received by the IACHR on March 9 of that year.

referring the accused to oral proceedings.<sup>110</sup> At the end of the oral phase, on December 17, 2008, the members of the National Criminal Chamber handed down judgment acquitting Juan Carlos Tello Delgado by a majority decision in the following terms:

[...] it has been shown that the witness, Arnulfo Roncal Vargas, as indicated in radio message No. 640 on p. 2574, ordered the release of the victim, an order with which the accused, according to radio message No. 641 on the same page, complied; this agrees with the certificate of release, the signature on which came from the hand of the victim, as indicated by expert graphologist's opinion No. 2110/91, ratified in the oral proceedings, and by the versions given to the Army inspector by sergeants Oscar Gamarra Cabanillas and Aldo Olórtegui Martel, as can be seen on pp. 2589 and 2590, which, although they were received at the same time, do report the release of the victim, as was reiterated by the witnesses Simeón Retuerto and Carlos Humberto Martínez García during oral proceedings.

[...] it has been shown that the victim was detained and led away by the accused, and that he has not since been located, which represents suffering for his next-of-kin which, evidently, has affected them for more than 17 years. Nevertheless, serious doubts also exist regarding the accused's responsibility in those incidents, and those doubts work in his favor under the constitutional principle of *IN DUBIO PRO REO*, enshrined in Article 139.11 of our Constitution, for which reason acquittal from the charges must proceed in accordance with the terms of Article 284 of the Code of Criminal Procedure (...).<sup>111</sup>

88. The information contained in the judgment of the National Criminal Chamber indicates that in addition to those set out in case file No. 859-92 before the military justice system, the following formalities were pursued:

*At the preliminary investigation stage:*

– Investigation statements from Porfirio Osorio Rivera, Santa Fe Gaytán Calderón, Patricio Chavarría Celestino, Gudmer Tulio Zárate Osorio, Jorge Húngaro Atencio, Juan José Félix Reyes, and Arnulfo Roncal Vargas.

*At the committal stage:*

- Testimonies of Juana Rivera Lozano, Gudmer Tulio Zárate Osorio, Juan Félix Reyes Fernández, Santa Fe Gaytán Calderón, Salvador Chávez Huacho, Arnulfo Roncal Vargas, Jorge Húngaro Atencio, and Patricio Chavarría Celestino.
- Preventive statement of Porfirio Osorio Rivera.

*During the oral proceedings:*

- Preventive statement of Porfirio Osorio Rivera.
- Witness statements from Aquiles Román Atencio, Santa Fe Gaytán Calderón, Pablo Correa Falen, Arnulfo Roncal Vargas, Simeón Refuerto Roque, and Carlos Humberto Martínez García.
- Cross-examination between Porfirio Osorio Rivera and the defendant Juan Carlos Tello Delgado, and between the witness Aquiles Román Atencio and the defendant.
- Ratification by Luis Gerardo Montesinos Aguilar and César Melesio Aliaga Rojas, expert graphologists of the National Police of Peru, of expert graphology opinion No. 2111/91 of December 16, 1991, regarding the authenticity of the signature and fingerprints of Jeremías Osorio Rivera on the document titled "certificate of release."

89. In addition to the statements and other formalities described, a series of documents were incorporated into the proceedings of the trial conducted before the regular courts; of these, the most notable are the following:

<sup>110</sup> **Annex 80:** Prosecution deed of April 29, 2008, issued by the National Criminal Chamber, case file No. 554-07.

<sup>111</sup> **Annex 25:** Resolution of December 17, 2008, issued by the National Criminal Chamber, case file No. 554-07, operative paragraph 8, No. 13, and operative paragraph 9.



- Copies of the police reports on Jeremías Osorio Rivera: 056-DIRCOTE of November 12, 1989; 047-D3-DIRCOTE of April 4, 1991; and 001-SECOTE-HH of January 1, 1992, where he is recorded as not present.
- Document No. 2057-SGMDC-C/1 from the General Secretariat of the Ministry of Defense, reporting that the files of the 18th Armored Division contain no information on military personnel who served at the countersubversive military base in Cajatambo.
- Document No. 2361-S-1.a/1-4/02.32.01, sent by the Director General of Army Staff, with the same contents as the document described in the previous item.
- Document No. 298-DIRCOTE PNP-OFINTE-UNIBAS, indicating that Jeremías Osorio Rivera and other residents of Cochas-Paca have police records for the crime of terrorism.

90. Following the acquittal ordered by the National Criminal Chamber on December 17, 2008, the injured party filed a remedy for annulment, which was placed before the Temporary Criminal Chamber of the Supreme Court of Justice. On June 24, 2010, the Supreme Court upheld the remedy and annulled the judgment of the lower Criminal Chamber, finding that it had not properly assessed the evidence.<sup>112</sup> Because of that decision, oral proceedings have recommenced before the National Criminal Chamber, with fresh hearings held on November 16 and 23, 2010, on December 7, 13, and 21, 2010, and on August 15 and 23, 2011;<sup>113</sup> so far, however, no date has been set for judgment to be given.

## V. ANALYSIS OF LAW

### 1. **Right to juridical personality, to life, to humane treatment, and to personal liberty: Articles 3, 4.1, 5.1, 5.2, and 7 of the American Convention, in conjunction with the obligation of respecting and ensuring rights (Article 1.1 thereof) and the obligation contained in Article I.a of the IACFDP**

91. The Articles of the American Convention identified in the section title read as follows:

Article 3. Right to Juridical Personality

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

Article 4. Right to Life

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

Article 5. Right to Humane Treatment

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.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be

<sup>112</sup> **Annex 35:** Supreme deed of execution of June 24, 2010, issued by the Permanent Criminal Chamber of the Supreme Court of the Republic, case file No. 031-06.

<sup>113</sup> **Annex 81:** Minutes of the oral proceedings currently underway before the National Criminal Chamber. Annex to the petitioners' communication of September 7, 2011, received by the IACHR on that same date.

released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.  
[...]

92. In turn, Article I.a of the Inter-American Convention on Forced Disappearance of Persons provides:

Article I

The States Parties to this Convention undertake:

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

93. Before examining the possible responsibility of the Peruvian State under the provisions transcribed above, the Commission must rule on the legal nature of the facts established in the case at hand. For this, it will take into account the definition set out in Article II of the Inter-American Convention on Forced Disappearance of Persons (hereinafter “the IACFDP”). According to that instrument,

[F]orced 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.

94. The Commission has established that Jeremías Osorio Rivera was detained by elements of the Peruvian Army on April 28, 1991, and was held incommunicado in a military camp in the community center of Nunumia, Gorgor district, Cajatambo province, Lima department, until April 30, 1991. It has been shown that on that date, the victim’s next-of-kin and several residents of Cochabamba saw him for the last time. In addition, the IACHR has found that since June 1, 1991, the soldiers responsible for Jeremías Osorio’s arrest presented false information on his whereabouts and that prior to that date, they had refused to report on the victim’s situation. Consequently, and based on the analysis offered in this chapter, the Commission believes that the above elements are sufficient to conclude that what happened to Mr. Jeremías Osorio Rivera must be defined as a forced disappearance, pursuant to the terms of Article II of the IACFDP.

95. According to the constant jurisprudence of the inter-American system, forced disappearance constitutes an unlawful act that gives rise to a multiple and continuing violation of a number of rights protected by the Convention and leaves the victim in a state of complete defenselessness, opening up the way for other related crimes. The international responsibility of the State is heightened when the disappearance is a part of a systematic pattern or practice followed or tolerated by its authorities. It is, briefly stated, a crime against humanity that implies the gross abandonment of the essential principles on which the inter-American system is based.<sup>114</sup>

96. The characteristics that define a disappearance include the means through which it is carried out to conceal all evidence of the facts, of the corresponding responsibility, and of the victim’s fate. Another characteristic is the way in which the failure to clear up the incident and to assign responsibilities affects not only the direct victim, but also his or her family and society in general.<sup>115</sup>

97. When a state ratifies the Inter-American Convention on Forced Disappearance of Persons, under Article I.a it agrees “not to practice, permit, or tolerate the forced disappearance of

<sup>114</sup> **Annex 8:** IACHR, Report No. 101/01, Case 10.247 and others, Extrajudicial Executions and Forced Disappearances, Peru, October 11, 2001, para. 178, available at [www.cidh.oas.org/annualrep/2001sp/Peru10247.htm](http://www.cidh.oas.org/annualrep/2001sp/Peru10247.htm).

<sup>115</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Narciso González Medina and others v. the Dominican Republic, Case 11.324, May 2, 2010, paras. 106 and 107; and Application to the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others v. the Republic of El Salvador, Cases 12.494, 12.517, and 12.518, June 28, 2010, paras. 134 and 135. Documents available at [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

persons, even in states of emergency or suspension of individual guarantees.” The Commission notes that although the facts of the case at hand took place prior to Peru’s ratification of this Convention, given the permanent or continuous nature of the crime of forced disappearance, its effects remain until the fate or whereabouts of the victim is determined; consequently, the State is in a situation of ongoing violation of its international obligations.<sup>116</sup>

98. The Commission has adopted a comprehensive approach to this breach of human rights, taking it to be a continued violation. That approach enables it to analyze and establish the total scope of the State’s responsibility. It must be noted that until the fate or whereabouts of the victim or of his mortal remains is determined, his family and society in general endure the experience of a forced disappearance with all its consequences.<sup>117</sup>

99. In forced disappearance cases, the Inter-American Court has ruled that it is not necessary to conduct a detailed analysis of the arrest in light of each of the guarantees established in Article 7 of the American Convention. In the view of the Inter-American Court, when it has been established that an arrest was a prior step before a disappearance, it is unnecessary to determine whether the victim was informed of the reasons for his or her arrest, whether it took place in violation of the causes and conditions established in the legislation in force at the time of the facts, or whether the arrest was unreasonable, unpredictable, or disproportionate.<sup>118</sup> This is because the analysis of an alleged forced disappearance must take into account the fact that an individual’s arrest is only the start of a complex violation that persists until the fate and whereabouts of the victim are revealed.<sup>119</sup>

100. In the case at hand, it has been shown that on April 28, 1991, Jeremías Osorio Rivera was deprived of his liberty by members of a Peruvian Army patrol. The IACHR has concluded that this arrest was the first step in the victim’s forced disappearance; it is therefore unnecessary to analyze if the circumstances surrounding his arrest were in line with each of the conditions set out in Article 7 of the American Convention. On the contrary, the fact that Jeremías Osorio was forcibly disappeared after his arrest allows the conclusion that it was illegal, arbitrary, and in breach of the guarantees set out in that provision of the Convention.

101. Regarding the right to humane treatment, the Inter-American Court has acknowledged that “a person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated.”<sup>120</sup> In addition, the Inter-American Court has said that forced disappearance constitutes a violation of that right in that “prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment [...] in violation of paragraphs 1 and 2 of that article.”<sup>121</sup> Specifically, the Court has

<sup>116</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña v. the Republic of Bolivia, Case 12.529, May 12, 2009, para. 15, available at [www.cidh.oas.org/demandas/demandasESP2009.htm](http://www.cidh.oas.org/demandas/demandasESP2009.htm).

<sup>117</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Narciso González Medina and others v. the Dominican Republic, Case 11.324, May 2, 2010, paras. 106 and 107; and Application to the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others v. the Republic of El Salvador, Cases 12.494, 12.517, and 12.518, June 28, 2010, paras. 134 and 135. Documents available at [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>118</sup> I/A Court H. R., *Case of La Cantuta v. Peru*, Judgment of November 29, 2006, Series C No. 162, para. 109.

<sup>119</sup> I/A Court H. R. *Case of Ticona Estrada et al. v. Bolivia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191, para. 56.

<sup>120</sup> I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Judgment of November 25, 2000, Series C No. 70, para. 90.

<sup>121</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, paras. 156 and 187; *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 323; *Case of Ticona Estrada et al. v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191, para. 58.

ruled that it is clear that the victims of such practices suffer from abridgements of their physical integrity in all its dimensions.<sup>122</sup>

102. In the case at hand, in addition to the physical and mental suffering inherent to a forced disappearance, the IACHR has established that Jeremías Osorio was the target of deliberate acts of violence during his transfer by Army personnel on April 30, 1991. Those facts must therefore be assessed to determine whether they constitute torture under the terms of the ban on that practice enshrined in Article 5.2 of the Convention.

103. According to the jurisprudence of the Inter-American Court, the IACPPT is a part of the Inter-American *corpus iuris* that must be used to establish the content and scope of the general provision contained in Article 5.2 of the Convention.<sup>123</sup> Article 2 of the IACPPT defines torture as:

Any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

104. In light of the precedents set by the Commission and the Inter-American Court, for an action to constitute torture it must be: (a) an intentional act, (b) which causes severe physical or mental suffering, and (c) committed with a given purpose or aim.<sup>124</sup> The Court has ruled that “threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered psychological torture.”<sup>125</sup> Similarly, the Court has ruled that people deprived of freedom are in a situation of particular vulnerability, and so the competent authorities are obliged to adopt measures to protect their physical integrity and the dignity inherent to all human beings.<sup>126</sup> In addition, it has held that the State may be held responsible for torture and cruel, inhuman, or degrading treatment if the authorities fail to conduct a rigorous investigation into such acts committed against people held in its custody.<sup>127</sup>

105. The IACHR concluded that Jeremias Osorio was aggressively transferred to the Cajatambo Counter-subversive Base in the morning of April 30, 1991, after being held incommunicado at the Nunumia’s school since nighttime of April 28, 1991. The IACHR also concluded that the Army members who detained the victim publicly accused him of being a terrorist and that after his removal from the Nunumia’s school in the morning of April 30, 1991, he was not allowed to speak to his brother, partner and mother, who were advised by peasants of the zone to say farewell to Mr. Jeremías Osorio. According to the established facts and to the information published by the Truth and Reconciliation Commission,

<sup>122</sup> I/A Court H. R., *Case of Ticona Estrada et al. v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191, para. 58.

<sup>123</sup> I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, para. 145.

<sup>124</sup> IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, Section 3, Analysis, available at [www.cidh.oas.org/annualrep/95span/cap.iii.peru10.970.htm](http://www.cidh.oas.org/annualrep/95span/cap.iii.peru10.970.htm). I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 79.

<sup>125</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 272; *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 119; *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114, para. 147; and *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, para. 92.

<sup>126</sup> See also: U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), Human Rights Committee, General Comment 21, para. 3; ECHR, *Case of Dzieciak v. Poland*, Application No. 77766/01, Judgment of December 9, 2008; ECHR, *Case of Slimani v. France*, Application No. 57671/00, Judgment of July 27, 2004, para. 28.

<sup>127</sup> I/A Court H. R., *Case of Baldeón García*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 120; and *The “Street Children” Case (Villagrán Morales et al.)*, Judgment of November 19, 1999, Series C No. 63, para. 170. Similarly, see: ECHR, *Yavuz v. Turkey*, Judgment of January 10, 2006, App. No. 67137/01, para. 38; ECHR, *Aksoy v. Turkey*, Judgment of December 18, 1996, App. No. 100/1995/606/694, paras. 61 and 62; and ECHR, *Tomasi v. France*, Judgment of August 27, 1992, Series A No. 241-A, paras. 108 to 111.

persons accused of belonging to the Shining Path were subjected to arbitrary detention, torture and forced disappearance in the province of Cajatambo, particularly between 1989 and 1992<sup>128</sup>.

106. As detailed in paragraphs 54 and 67 above, Mr. Osorio's journey between the school of Nunumia and the Counter-subversive Base of Cajatambo lasted several hours. He remained handcuffed meanwhile and with a hood covering his head. According to the established facts, four peasants of Chochas-Paca, Cajatambo province, participated to the journey along with the Army personnel. Mr. Porfirio Osorio Rivera's statements to the domestic judicial authorities indicate that three of these persons reported that the victim wandered with difficulties and that he was obliged to walk by himself, without receiving food from the militaries<sup>129</sup>.

107. In view of the aforesaid, the IACHR finds that the acts of violence perpetrated against Jeremías Osorio Rivera during his transfer to the Cajatambo Counter-subversive Base on April 30, 1991, were committed deliberately and caused him intense physical and mental suffering. Considering the circumstances in which they took place and in view of the statements issued by Lieutenant Juan Carlos Tello Delgado to the peasants of the region that the victim was a member of the Shining Path, the IACHR deems that the purpose of such violent acts was to punish and intimidate Mr. Jeremías Osorio. The Commission therefore concludes that those acts of violence constitute torture, in the terms of Article 5.2 of the American Convention.

108. The Inter-American Court has ruled that the right to life is a fundamental human right, and that its full exercise is essential for the exercise of all other human rights.<sup>130</sup> That means that states have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in addition, the duty to prevent its agents or private citizens from violating it.<sup>131</sup> According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).<sup>132</sup>

109. The Court has also stressed that "compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."<sup>133</sup> Consequently:

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction<sup>134</sup>

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<sup>128</sup> See paragraph 47 above.

<sup>129</sup> See paragraph 56 above.

<sup>130</sup> I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 78; and *Case of the Street Children (Villagrán Morales et al.) v. Guatemala*, Judgment of November 19, 1999, Series C No. 63, para. 144.

<sup>131</sup> I/A Court H. R., *The Street Children Case (Villagrán Morales et al.) v. Guatemala*, Judgment of November 19, 1999, Series C No. 63, para. 144.

<sup>132</sup> I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 79; and *Case of Baldeón García v. Peru*, Judgment of April 6, 2006, Series C No. 147, para. 83.

<sup>133</sup> I/A Court H. R., *Case of Zambrano Vélez et al.*, *supra* note 135, para. 80; *The Street Children Case (Villagrán Morales et al.)*, *supra* note 135, para. 144.

<sup>134</sup> I/A Court H. R., *Case of Zambrano Vélez et al.*, *supra* note 135, para. 81; *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, para. 66.

110. According to the Court's case law, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>135</sup> The jurisprudence of the Inter-American system has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he has been killed.<sup>136</sup>

111. In its analysis of the facts, the Commission has taken into account that the victim was a civilian. Under Article 29(b) of the American Convention<sup>137</sup> and as the Inter-American Court found in the *Case of the "Mapiripán Massacre" v. Colombia*:

with regard to establishment of the international responsibility of the State in the instant case, the Court cannot set aside the existence of general and special duties of the State to protect the civilian population, derived from International Humanitarian Law, specifically Article 3 common of the August 12, 1949 Geneva Agreements and the provisions of the additional Protocol to the Geneva Agreements regarding protection of the victims of non-international armed conflicts (Protocol II). Due respect for the individuals protected entails passive obligations (not to kill, not to violate physical safety, etc.), while the protection due entails positive obligations to impede violations against said persons by third parties. Carrying out said obligations is significant in the instant case, insofar as the massacre was committed in a situation in which civilians were unprotected in a non-international domestic armed conflict.<sup>138</sup>

112. With regard to the facts in the instant case and bearing in mind the armed conflict that framed them, the Commission notes that common Article 3 of the Geneva Conventions expressly forbids under any circumstances violence against "[p]ersons taking no active part in the hostilities."<sup>139</sup> For its part, Article 13 of Protocol II recognizes the principle of civilian immunity as follows:<sup>140</sup>

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

113. As regards the right to recognition of juridical personality, the Commission notes that it is an essential and necessary prerequisite in order to hold and exercise all rights, since without it, a person does not enjoy the protection and guarantees that the law offers, simply because they are invisible to it.<sup>141</sup>

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<sup>135</sup> I/A Court H.R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109. para. 154; *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70. para. 130.

<sup>136</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, para. 188.

<sup>137</sup> Article 29(b) of the American Convention on Human Rights – Restrictions Regarding Interpretation: "No provision of this Convention shall be interpreted as: [...] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party [...]"

<sup>138</sup> I/A Court H.R., *Case of the "Mapiripán Massacre" v. Colombia*, Merits, Reparations and Costs, Judgment of September 15, 2005, Series C No. 134, para. 114.

<sup>139</sup> Peru ratified the Geneva Conventions on February 15, 1956. Available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>.

<sup>140</sup> Peru ratified Protocol II to the Geneva Conventions on July 14, 1989. Available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>.

<sup>141</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others v. the Republic of El Salvador, Cases 12.494, 12.517, and 12.518, June 28, 2010, para. 174, available at [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).



114. By its very nature, the forced disappearance of persons seeks the juridical annulment of individuals in order to remove them from the protection that the laws and justice afford them. Thus, the apparatus of repression ensures that persons may be deprived of their rights with impunity by placing them beyond the reach of any possible judicial protection. The aim of those who perpetrate forced disappearance is to operate outside the law and conceal any evidence of crime, thereby seeking to avert its investigation and punishment, and prevent the person or their next-of-kin from filing suit or, in the event suit is filed, from accomplishing a positive result.<sup>142</sup>

115. The Human Rights Committee has established that one of the rights that may be violated in forced disappearance cases is the right to juridical personality.<sup>143</sup> Similarly, Article 7.2.i of the 1998 Rome Statute states that forced disappearance of persons means “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

116. Likewise, the definition set out in Article II of the 2006 International Convention for the Protection of All People from Enforced Disappearance<sup>144</sup> establishes that refusals to acknowledge the deprivation of liberty or whereabouts of a person, along with other elements involved in disappearances, “places such a person outside the protection of the law.” Equally, the United Nations independent expert on the enforced or involuntary disappearance of persons has said that forced disappearances can entail a violation of the right to recognition as a person before the law, on account of the fact that the victim is intentionally removed from the protection of the law.<sup>145</sup>

117. Repeatedly, the precedents set by the IACHR have held that persons who are detained and disappeared are “excluded from the legal and institutional framework of the State, which constitute[s] the negation of their very existence as human beings recognized as persons before the law,” and as a result, it has declared the violation of Article 3 of the Convention.<sup>146</sup> In the case of Anzualdo Castro, the Inter-American Court embraced the reasoning historically used by the Commission, by the European Court, and by the quasi-judicial agencies of the universal human rights system, by recognizing that forced disappearance implies the suppression of the right to juridical personality.<sup>147</sup>

118. According to the facts established in the case at hand, Mr. Jeremías Osorio Rivera was the victim of a forced disappearance committed by elements from the Cajatambo Countersubversive Base who arrested him in the community of Nunumia, Gorgor district, Cajatambo province, on April 28, 1991. At the same time, and as will be described in the following section, the judicial authorities who dealt with the complaints lodged by the victim’s next-of-kin failed to conduct a diligent and timely investigation

<sup>142</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Gregoria Herminia Contreras and others v. the Republic of El Salvador, Cases 12.494, 12.517, and 12.518, June 28, 2010, para. 175, available at [www.cidh.oas.org/demandas/demandasESP2010.htm](http://www.cidh.oas.org/demandas/demandasESP2010.htm).

<sup>143</sup> Human Rights Committee of the Covenant on Civil and Political Rights, Communication 1327/04, Grioua v. Algeria, paras. 7.8 and 7.9.

<sup>144</sup> Adopted by the United Nations General Assembly in resolution A/RES/61/177 of December 20, 2006.

<sup>145</sup> United Nations, Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, E/CN.4/2002/71 of January 8, 2002, para. 70.

<sup>146</sup> IACHR, Report No. 11/98, Case 10.606, Merits, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, para. 57, available at [www.cidh.oas.org/annualrep/97span/Guatemala10.606.htm](http://www.cidh.oas.org/annualrep/97span/Guatemala10.606.htm). IACHR, Report No. 55/99, Merits, Case 10.815 and others, Juan de la Cruz Núñez Santana and others, Peru, April 13, 1999, para. 111, available at [www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.815.htm](http://www.cidh.oas.org/annualrep/98span/Fondo/Peru%2010.815.htm). IACHR, Report No. 3/98, Case 11.221, Merits, Tarcisio Medina Charry, Colombia, April 7, 1998, para. 64, available at [www.cidh.oas.org/annualrep/97span/Colombia11.221.htm](http://www.cidh.oas.org/annualrep/97span/Colombia11.221.htm). IACHR Report No.30/96, Case 10.897, Merits, Arnoldo Juventino Cruz, Guatemala, October 16, 1996, para. 23, and Report No. 55/96, Case 8076, Merits, Axel Raúl Lemus García, Guatemala, December 6, 1996, para. 24, available at [www.cidh.oas.org/casos/96sp.htm](http://www.cidh.oas.org/casos/96sp.htm).

<sup>147</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 90.



to determine Jeremías Osorio's whereabouts, establish the facts, punish the guilty, and provide other pertinent measures of redress; as a result, the forced disappearance remains in total impunity. Accordingly, and on the basis of the analysis in this section, the IACHR concludes the Peruvian State did fail to meet its obligations of respecting and ensuring the rights enshrined in Articles 3, 4.1, 5.1, 5.2, and 7 of the American Convention, in conjunction with Article 1.1 thereof, and that it also did violate Article I.a of the IACFPD, all with respect to Jeremías Osorio Rivera.

**2. Right to a fair trial and judicial protection (Articles 8.1 and 25.1 of the American Convention on Human Rights), in conjunction with the obligation of ensuring human rights and domestic legal effects (Articles 1.1 and 2 thereof), and Article I.b of the Inter-American Convention on Forced Disappearance of Persons**

119. The articles of the American Convention cited in the section heading read as follows:

Article 8. Right to a Fair Trial

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

Article 25. Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

Article 1. Obligation to Respect Rights

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

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

120. Article I.b of the Inter-American Convention on Forced Disappearance of Persons provides that the states parties thereto shall “punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.”

121. The Inter-American Court has addressed the substance of the right to know the truth in its case law, particularly in forced disappearance cases. In *Velásquez Rodríguez*, the Court ruled that the State was obliged to “inform the relatives of the fate of the victims and, if they have been killed, the location of their remains.”<sup>148</sup> In cases of this kind, the relatives of the disappeared are victims of the acts that constitute forced disappearance, as a result of which they are entitled to have such incidents investigated and to see the guilty prosecuted and, if applicable, punished.<sup>149</sup> The Court has recognized

<sup>148</sup> I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C No. 4, para. 181.

<sup>149</sup> I/A Court H. R., *Case of Blake v. Guatemala*, Judgment of January 24, 1998, Series C No. 36, para. 97.

that the right to the truth of the relatives of victims of serious human rights violations is framed within the right of access to justice.<sup>150</sup>

122. The right to know the truth has also been acknowledged in several United Nations instruments and, more recently, by the General Assembly of the Organization of American States (OAS).<sup>151</sup>

123. According to precedent established by the Inter-American Court:

The right to know the truth represents a necessary effect for it is important that a society knows the truth about the facts of serious human rights violations. This is also a fair expectation that the State is required to satisfy, on the one hand, by means of the obligation to investigate human rights violations and, on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires from the State the procedural determination of the patterns of joint action and of all those who participated in various ways in said violations and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to build and safeguard historical memory, to clarify the events and to determine institutional, social and political responsibilities in certain periods of time of a society.<sup>152</sup>

124. Regarding the right of the next-of-kin of victims to obtain justice and redress, the Court has ruled that:

It is evident from Article 8 of the Convention that the victims of human rights violations or their next of kin should have substantial possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and punish those responsible, and to seek due reparation.<sup>153</sup>

125. Similarly, the Court has said that victims' families have the right to expect – and the State has the obligation to ensure – that what befell the victims will be investigated effectively by state authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, that the pertinent penalties will be imposed, and that the losses suffered by the next of kin will be repaired.<sup>154</sup> According to the above, the State's authorities, once apprised of a human rights violation – in particular of the right to life, humane treatment, or personal liberty –<sup>155</sup> have the duty of initiating, without delay and on an *ex officio* basis, a serious, impartial, and effective investigation,<sup>156</sup> which must be completed within a reasonable time.<sup>157</sup>

<sup>150</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 118.

<sup>151</sup> Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1). Report of Diane Orentlicher on the updating of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102, February 18, 2005). Study on the right to the truth, Report of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2006/91, January 9, 2006). OAS General Assembly, resolutions on the right to the truth, AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVII-O/07), and AG/RES. 2406 (XXXVIII-O/08).

<sup>152</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 119.

<sup>153</sup> I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 102; *Case of the Street Children (Villagrán Morales et al.) v. Guatemala*, Judgment of November 19, 1999, Series C No. 63, para. 227; and *Case of the Serrano Cruz Sisters v. El Salvador*, Merits, Reparations, and Costs, Judgment of March 1, 2005, Series C No. 120, para. 63.

<sup>154</sup> I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 103; *Case of Bulacio v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 18, 2003, Series C No. 100, para. 114; and *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 382.

<sup>155</sup> I/A Court H. R., *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, para. 100.

<sup>156</sup> I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers v. Peru*,  
Continues...

126. The Court has also said that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”<sup>158</sup>

127. Regarding the duty of conducting an investigation with due diligence, the Inter-American Court has ruled that this means that inquiries must be pursued through all legal means available and must be oriented toward the determination of the truth.<sup>159</sup> The Court has further ruled that the State has the duty of ensuring that all steps necessary to learn the truth about what happened and for those responsible to be punished are carried out,<sup>160</sup> involving all institutions of the State in that undertaking.<sup>161</sup> The Court has also said that the authorities must adopt all reasonable measures to guarantee the necessary evidence in order to carry out the investigation.<sup>162</sup>

128. Although the obligation of investigating is an obligation of means and not of results, it must be undertaken by the State as its own legal duty, and not as a mere formality preordained to be ineffective,<sup>163</sup> or as a step taken by private interests that depends upon the procedural initiative of victims or their families or upon the offer of proof by private parties.<sup>164</sup>

129. Regarding the State’s obligation of investigating complaints alleging forced disappearances, the Court has said that “faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*.”<sup>165</sup> Thus, whenever there is a reason to believe that a person has been subjected to forced disappearance, an

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Judgment of July 8, 2004, Series C No. 110, para. 146; *I/A Court H. R., 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, para. 130.

<sup>157</sup> *I/A Court H. R., Case of Bulacio v. Argentina*, Judgment of September 18, 2003, Series C No. 100, para. 114; *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 146; and *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 382.

<sup>158</sup> *I/A Court H. R., 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, para. 124; *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 145; *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 381; and *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*, Judgment of November 24, 2006, Series C No. 158, para. 106.

<sup>159</sup> *I/A Court H. R., Case of García Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 20, 2007, Series C No. 168, para. 101.

<sup>160</sup> *I/A Court H. R., Case of Bulacio v. Argentina*, Judgment of September 18, 2003, Series C No. 100, para. 114; *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 146; and *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 382.

<sup>161</sup> *I/A Court H. R., 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, para. 130; *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, para. 120; and *Case of Huilca Tecse*, Judgment of March 3, 2005, Series C No. 121, para. 66.

<sup>162</sup> *I/A Court H. R., Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 122.

<sup>163</sup> *I/A Court H. R., Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, para. 177; *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, para. 131; and *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 120.

<sup>164</sup> *I/A Court H. R., Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, para. 177; and *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 120.

<sup>165</sup> *I/A Court H. R., Case of Goiburú et al. v. Paraguay*, Judgment on Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 84; *Case of Anzaldo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 59; and *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 139.

investigation must be conducted on an *ex officio* basis, without delay, and in a serious, impartial and effective fashion. In any case, every state authority, public official, or private citizen who becomes aware of acts intended to forcibly disappear persons is required report them immediately.<sup>166</sup>

130. Regarding the guarantee of promptness, the Court has ruled that three elements must be taken into consideration in deciding whether or not a delay is reasonable: (a) the complexity of the matter, (b) the judicial activity of the interested party, and (c) the behavior of the judicial authorities.<sup>167</sup> In more recent cases, the Court has included a fourth element: the effects that a delay in the proceedings could have on the victim's legal situation.<sup>168</sup>

131. Therefore, the task is to analyze, in light of the standards listed in the previous paragraphs, whether the Peruvian State has pursued the criminal investigations with due diligence and within a reasonable time, and whether they have been an effective resource for ensuring the victim's right of access to justice.

132. Although forced disappearance cases demand the immediate action of the prosecution service and the legal system, ordering the steps necessary to determine the whereabouts of the victim or the place where he or she is being held,<sup>169</sup> the State has not spoken of any kind of specific undertakings in that regard, and neither does the case file before the IACHR contain any indication thereof. Thus, Mr. Porfirio Osorio, who appeared as the injured party in all the domestic proceedings, made applications to each instance for on-site inspections to be conducted at the locations where the victim was held in custody. In response, both the Provincial Prosecutor, on September 23, 1991, and the Committal Judge of Cajatambo, on October 15, 1991, agreed to an on-site inspection, provided that the complainant cover the transportation expenses of the authorities involved. The copies of criminal proceedings No. 24-91 indicate that Mr. Porfirio Osorio did in fact provide the means of transportation that the authorities requested, but that even so, the on-site inspection was not carried out because the officials of the Cajatambo Court were on strike. On this point, the IACHR holds that it is unreasonable to impose on the next-of-kin of a victim in a criminal trial – particularly, as in the one at hand, in a forced disappearance case – any expenses related to clearing up the facts. On the contrary: it was the duty of the Cajatambo judicial authorities to act on an *ex officio*, timely basis to preserve the evidence needed to pursue the proceedings.

133. The IACHR notes that the prosecutors and judicial authorities who dealt with the proceedings as case file No. 24-91 failed to perform basic formalities, such as taking statements from all the witnesses who saw Jeremías Osorio's arrest. This was in spite of the fact that the complainant had requested the binding notification of the person who was detained along with the victim, Gudmer Tulio Zárate Osorio, and of other local residents who accompanied the victim during his transfer from the community of Nunumia to the Cajatambo Countersubversive Base. Most of these people were only called on to give statements when the investigation was reopened before the Specialized Prosecutor of Lima in September 2004 – in other words, more than thirteen years after the victim's forced disappearance. Because of these omissions by the State's authorities and the passage of several years without the pursuit of formalities of vital importance to the criminal proceedings, the likelihood of discovering the truth about what happened and of revealing Jeremías Osorio's whereabouts were substantially undermined, to the detriment of his next-of-kin.

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<sup>166</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 65; and *Case of Radilla Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2009, Series C No. 209, para. 143.

<sup>167</sup> I/A Court H. R., *Case of Escué Zapata*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 165, para. 72; and *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, paragraph 102.

<sup>168</sup> I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196; and *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192.

<sup>169</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 134.

134. The IACHR notes that there were several resolutions to expand the deadline for committal proceedings No. 21-94 and that between December 1991 and January 1992 the Court of Cajatambo hearing the case was without a judge, which caused an unjustified delay in the result of the proceedings. Although the IACHR does not have a complete copy of case file No. 24-91, the information in its possession indicates that several months after Porfirio Osorio Rivera presented his complaint on June 9, 1991, the main formalities that had been carried out were the taking of his witness statement and of a statement from the defendant Juan Carlos Tello.

135. As has been established, on July 22, 1992, the Provincial Court of Cajatambo declined jurisdiction in favor of the military justice system and referred the proceedings to the Third Permanent Military Court of Lima. The IACHR notes that while the criminal proceedings were being dealt with by that court and other agencies of the military justice system, no significant formalities were performed, such as taking statements from Gudmer Tulio Zárate Osorio and from the members of the Army patrol who detained Jeremías Osorio Rivera on April 28, 1991. Those formalities were recommended by the Army's judicial auditor in his opinion of February 2, 1994, but the case file before the IACHR contains no information to indicate that they were carried out.

136. As for the criminal proceedings under case file No. 859-92, the IACHR believes it would be unnecessary to offer a detailed examination of the omissions and irregularities committed therein. This is because allowing the military courts to hear cases of crimes involving human rights violations is *per se* contrary to the right of victims and their next-of-kin to be heard by a competent, independent, and impartial tribunal, pursuant to the terms of the Article 8.1 of the Convention.<sup>170</sup>

137. The Commission again states that military justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses in the strictest sense. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal courts. Inverting the jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which ultimately call into question the civilian courts and the rule of law.<sup>171</sup>

138. In the case at hand, note should be taken of the context of impunity within which the courts operated with respect to offenses committed by the security forces, chiefly after the coup d'état of April 5, 1992. Thus, in its Final Report, the CVR noted that during the Fujimori administration, the Public Prosecution Service deferred completely to the executive branch, and that public prosecutors refrained from bringing charges against members of the police and military, conducting forensic examinations, or investigating state agents involved in human rights violations.<sup>172</sup> As a result, 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.

139. With reference to the criminal trial underway before the regular courts since Porfirio Osorio filed a new complaint on June 14, 2004, the IACHR notes that a series of formalities have been carried out in recent years, including taking witness statements from Cajatambo residents who saw the

<sup>170</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú and others v. the United Mexican States, August 2, 2009, para. 126, available at [www.cidh.oas.org/demandas/demandasESP2009.htm](http://www.cidh.oas.org/demandas/demandasESP2009.htm). IACHR, Report No. 53/01, Case 11.565, Merits, Ana, Beatriz, and Celia González Pérez, Mexico, April 4, 2001, para. 81, available at [www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/Mexico11.565.htm](http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Fondo/Mexico11.565.htm).

<sup>171</sup> IACHR, Application to the Inter-American Court of Human Rights in the case of Valentina Rosendo Cantú and others v. the United Mexican States, August 2, 2009, para. 123, available at [www.cidh.oas.org/demandas/demandasESP2009.htm](http://www.cidh.oas.org/demandas/demandasESP2009.htm). **Annex 7:** IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, doc. 59 rev., June 2, 2000, Chapter II, para. 214, available at [www.cidh.oas.org/countryrep/Peru2000sp/indice.htm](http://www.cidh.oas.org/countryrep/Peru2000sp/indice.htm).

<sup>172</sup> **Annex 82:** Final Report of the CVR, 2003, Vol. III, 2.6 *The Judiciary*, p. 283, available at [www.cverdad.org.pe/ffinal/index.php](http://www.cverdad.org.pe/ffinal/index.php).

victim's arrest and from some members of the countersubversive base in the province, police reports stating that Jeremías Osorio was being sought prior to his arrest, as well as other documents. However, the failure to conduct an inspection of the locations where the victim could have been taken in the earliest days following Porfirio Osorio Rivera's filing of the complaint on June 9, 1991, together with the years that have gone by without the eye-witnesses being called to give statements, had a serious impact on determining Jeremías Osorio's whereabouts and the truth about what happened. Of particular concern to the IACHR is the fact in the proceedings currently underway before the National Criminal Chamber, the Ministry of Defense's General Secretariat and Staff Directorate have reported that they have no information on the military personnel who were serving at the Cajatambo Countersubversive Military Base on the date of Jeremías Osorio's disappearance. That clearly poses an obstacle to the due punishment of all those responsible for that illegal act.

140. The Commission again states that according to established inter-American precedent, the right of access to justice demands the effective determination of the facts under investigation and, if applicable, the imposition of the corresponding criminal sanctions within a reasonable time: in consideration of the need to uphold the rights of injured parties, a prolonged delay may constitute, in and of itself, a violation of the right to a fair trial. In addition, since forced disappearances are involved, the right of access to justice includes determining the whereabouts or fate of the victim.<sup>173</sup>

In these cases, impunity must be eliminated by the determination of both the general responsibility of the State and the individual responsibilities – criminal and others – of its agents and private citizens. In complying with this obligation, the State is required to remove all obstacles, legal and factual, contributing to impunity. The investigations must be conducted in line with the rules of due process of law, which implies that the bodies of administration of justice must be organized in a manner so that its independence and impartiality is guaranteed and the prosecution of grave human rights violations is made before regular courts, in order to avoid impunity and search for the truth. Moreover, given the nature and gravity of the facts, particularly since they occurred in a context of systematic human rights violations, and since the access to justice is a peremptory rule under International Law, the need to eliminate impunity gives rise to an obligation for the international community to ensure inter-State cooperation by which they must adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to apply their domestic law and the international law to prosecute it and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so.<sup>174</sup>

141. In the case at hand, the State has provided no information about specific steps taken by its authorities to determine the whereabouts of Jeremías Osorio Rivera. Neither has Peru provided an explanation of the absence, to date, of a final judicial ruling, issued by a competent agency, in connection with the victim's disappearance.

142. Based on the parties' claims, the established facts, and the analysis offered in this section, the Commission concludes that more than 20 years after the victim's forced disappearance and with the entire truth of the incident still not known, the domestic criminal proceedings have not offered an effective resource for determining the fate of the victim or for ensuring the rights of access to justice and to the truth through the investigation and punishment of those responsible and the provision of comprehensive redress for the consequences of the violations committed. For the reasons given, the Commission believes that the State did violate the rights enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1 thereof, together with those contained in Article I.b of the IACFDP.

#### **The effects of Laws Nos. 26479 and 26492 on the obligation of providing Jeremías Osorio Rivera's family with truth and justice**

<sup>173</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 124.

<sup>174</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 125; and *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 160.

143. According to the parties' contentions and the information contained in the case file, between February 1996 and June 2004 the Peruvian judicial authorities took no steps whatsoever in connection with the forced disappearance of Jeremías Osorio Rivera. During most of that period, laws were in place that prevented the prosecution of offenses committed by state agents or civilians, "as a consequence of the antiterrorism effort." Specifically, on June 15, 1995, the Democratic Constituent Congress adopted Law No. 26479, Article 1 of which granted:

[...] general amnesty to military, police, or civilian personnel [...] under investigation, facing complaints, accused, being prosecuted, or convicted for regular and military crimes [...] for all incidents derived or arising from or as a consequence of the antiterrorism effort [...] from May 1980 up to the date of this law's enactment.<sup>175</sup>

144. Similarly, Article 6 of Law No. 26479 stipulated that "the facts or crimes of this law may not be investigated [...] all ongoing or executable legal cases are to be sent to the archive." On July 2, 1995, the Democratic Constituent Congress enacted Law No. 26492, stating that the amnesty law was not open to judicial review because its enactment was a matter of the sole competence of the legislative branch.

145. In its 1996 Annual Report, the IACHR said that Law No. 26479 constituted undue interference in the work of the judiciary and that Law No. 26492 "not only fails to provide an effective remedy, but goes much further, denying any possibility of appeal or of bringing an objection based on human rights violations."<sup>176</sup> Consequently, the IACHR recommended "that the Peruvian State repeal the amnesty law (No. 26479), and the law on judicial interpretation (No. 26492), because they are incompatible with the American Convention," and that it "investigate, try, and punish the state agents accused of human rights violations, especially violations that amount to international crimes."<sup>177</sup>

146. On March 14, 2001, the Inter-American Court of Human Rights issued judgment in the *Barrios Altos* case, ruling that amnesty laws Nos. 26479 and 26492 were incompatible with the American Convention on Human Rights and, consequently, were void of legal effect.<sup>178</sup> Subsequently, the Inter-American Court issued a judgment interpreting its judgment on the merits in which it ruled that given the nature of the violation that amnesty laws Nos. 26479 and 26492 represented, its decision in the judgment on the merits in *Barrios Altos* would be of general applicability.<sup>179</sup> In its final comments on the merits, the Peruvian State emphasized that "since the judgment handed down by the Inter-American Court in the *Barrios Altos* case, the obligation of conducting an investigation and of prosecuting and punishing has become more effective than it was in the past," and it further noted that the precedent marked "a nationwide rejection of the so-called *self-amnesties* issued in order to protect a group of people with ties to those in power at the time."<sup>180</sup>

147. The IACHR notes that the judicial authorities of the military justice system who heard the criminal complaint brought against Juan Carlos Tello Delgado did not invoke these amnesty laws in their irrevocable dismissal decision of February 7, 1996. However, as long as Laws 26479 and 26492 remained in force, fresh investigations to cast light on the forced disappearance of Jeremías Osorio Rivera could not be opened. As a result, and given the legal inability of the victim's next-of-kin to secure

<sup>175</sup> **Annex 83:** Law No. 26479 of June 14, 1992, available on the web site of the Congress of the Republic of Peru at [www.congreso.gob.pe/ntley/imagenes/Leyes/26479.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/26479.pdf).

<sup>176</sup> IACHR, *Annual Report 1996*, Chapter V, Human Rights Developments in the Region, Peru, Section IV.C., available at [www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm](http://www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm).

<sup>177</sup> IACHR, *Annual Report 1996*, Chapter V, Human Rights Developments in the Region, Peru, Section VIII.6, available at [www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm](http://www.cidh.oas.org/annualrep/96span/IA1996CapV4.htm).

<sup>178</sup> I/A Court H. R., *Case of Barrios Altos v. Peru*, Judgment of March 14, 2001, Series C No. 75, operative paragraph 4.

<sup>179</sup> I/A Court H. R., *Case of Barrios Altos v. Peru, Interpretation of the Judgment on the Merits* (Art. 67 of the American Convention on Human Rights), Judgment of September 3, 2001, Series C No. 83, operative paragraph 3.

<sup>180</sup> Communication from the State dated April 28, 2011, received by the IACHR on April 29 of that year, paras. 28 and 29.



truth and justice, the IACHR finds that the State did violate the rights enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligations contained in Articles 1.1 and 2 thereof.

**5. Obligation of adopting provisions of domestic law to criminalize the crime of forced disappearance of persons (Article 2 of the American Convention and Article III of the IACFDP)**

148. Article III of the IACFDP reads:

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

The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

149. The Inter-American Court, in its judgment of November 22, 2005, in the case of *Gómez Palomino v. Peru*, concluded that the definition of the crime of forced disappearance set out in Article 320 of the Peruvian Criminal Code was not in line with the applicable inter-American standards and, consequently, ordered its amendment in accordance with the definition contained in Article III of the IACFDP.<sup>181</sup> The aforesaid norm of the Peruvian Criminal Code reads as follows:

Article 320

Any public official or servant who deprives any person of their liberty by either ordering or carrying out actions leading to the duly proven disappearance of any such person, shall be punished by imprisonment for not less than fifteen years and disqualification from office, pursuant to Article 36(1) and (2) of the Criminal Code<sup>182</sup>.

150. In its judgment in the case of *Gómez Palomino v. Peru* the Court concluded that the definition contained in the cited norm “restricts forced disappearance offenders to public officials or servants” and that it “does not contain all forms of criminal involvement included in Article II of the [IACFDP]; therefore, it is incomplete. The Inter-American Court stressed that Article 320 of the Peruvian Criminal Code does not encompass the refusal to acknowledge the deprivation of liberty or to provide information about the fate or whereabouts of detained persons as elements of the forced disappearance definition. Finally, the Court noted that “Article 320 of the Criminal Code [...] provides that the forced disappearance must be ‘duly proven’ [which] complicates statutory construction thereof.”<sup>183</sup>

151. In the *Anzualdo Castro* case, the Court noted that the text of Article 320 of the Peruvian Criminal Code had not been amended and concluded that “so long as that criminal law is not correctly adapted, the State continues failing to comply with Articles 2 of the American Convention and III of the ICFDP.”<sup>184</sup> Through a resolution of July 5, 2011 on the follow-up of compliance on the judgment issued in the case of *Gómez Palomino*, the Court affirmed that “the State has not presented information on the concrete actions it had adopted to amend its criminal law as provided in the judgment”<sup>185</sup>.

<sup>181</sup> I/A Court H. R., *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 149 and operative paragraph 12.

<sup>182</sup> See Law No. 26926 of January 30, 1998, Article 1, available at the webpage of the Congress of the Peruvian Republic: [www.congreso.gob.pe/ntley/imagenes/Leyes/26926.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/26926.pdf).

<sup>183</sup> I/A Court H. R., *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, paras. 100-108.

<sup>184</sup> I/A Court H. R., *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 167.

<sup>185</sup> I/A Court H. R., Ruling on the follow-up on the compliance of the judgment on the *Case of Gómez Palomino*, July 5, 2011, para. 37.

152. Accordingly, and since the Peruvian State has not yet amended its definition of the crime of forced disappearance established in Article 320 of its Criminal Code through the mechanisms provided by its domestic law, the IACHR holds that there is ongoing noncompliance with the obligation of adopting domestic legal effects, in the terms of Article 2 of the American Convention and Article III of the IACFDP.

## **6. Right to humane treatment of the victim's next-of-kin (Articles 5.1 and 1.1 of the American Convention on Human Rights)**

153. The right to humane treatment, enshrined in Article 5.1 of the American Convention, establishes that "every person has the right to have his physical, mental, and moral integrity respected." In connection with this, the Commission has acknowledged that:

Among the fundamental principles upon which the American Convention is grounded is the recognition that the rights and freedoms protected thereunder are derived from the attributes of their human personality. From this principle flows the basic requirement underlying the Convention as a whole, and Article 5 in particular, that individuals be treated with dignity and respect.<sup>186</sup>

154. The precedents set by the Inter-American Court have established that members of victims' families may, in turn, be affected by violations of their right to mental and moral integrity.<sup>187</sup> Thus, the Inter-American Court has found violations of the right to mental and moral integrity of victims' next-of-kin based on the additional suffering they have undergone as a consequence of the specific circumstances of the violations committed against their loved ones<sup>188</sup> and based on the subsequent actions or omissions of state authorities regarding these facts.<sup>189</sup>

155. The Commission notes that, in accordance with precedents established by the Court, "in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred."<sup>190</sup>

156. Consequently, and since following the forced disappearance of Jeremías Osorio the State was also obliged to guarantee the right to humane treatment of his next-of-kin through an effective investigation, the absence of effective remedies constituted a source of additional suffering and anguish for the members of his family.

157. In addition to the assumed abridgment of the right to humane treatment of the next-of-kin of a forced disappearance victim, in the case at hand it has been shown that Jeremías Osorio Rivera's family pursued numerous formalities at the Army camp where he was initially detained on April 28, 1991,

<sup>186</sup> IACHR, Report No.38/00, Case 11.743, Merits, Rudolph Baptiste, Grenada, April 13, 2000, para. 89, available at [www.cidh.oas.org/annualrep/99span/De%20Fondo/Grenada11743.htm](http://www.cidh.oas.org/annualrep/99span/De%20Fondo/Grenada11743.htm).

<sup>187</sup> I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 7, 2003, Series C No. 99, para. 101; *Case of the Dos Erres Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 24, 2009, Series C No. 211, para. 206; and *Case of Heliodoro Portugal v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 12, 2008, Series C No. 186, para. 163.

<sup>188</sup> I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 335; *Case of Vargas Areco v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 155, para. 96; and *Case of Goiburú et al. v. Paraguay*, Merits, Reparations, and Costs, Judgment of September 22, 2006, Series C No. 153, para. 96.

<sup>189</sup> I/A Court H. R. *Case of Manuel Cepeda Vargas v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of May 26, 2010, Series C No. 213, para. 195.

<sup>190</sup> I/A Court H. R., *Case of Blake v. Guatemala*, Merits, Judgment of January 24, 1998, Series C No. 36, para. 114; *Case of Ticona Estrada v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 191, para. 87; *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 123; and *Case of Anzaldo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 105.

seeking his release or information on his situation. The victim's siblings, his mother, and his partner also filed complaints with the judicial authorities and gave statements to the criminal proceedings. It is also important to note that when Jeremías Osorio was forcibly disappeared by members of the Peruvian Army in early 1991, his earnings were the main source of subsistence for his companion, his mother, and his children, who at that time were all of minor age.<sup>191</sup>

158. Since the Court has said that in certain cases the continued denial of the truth about the fate of a disappeared person constitutes a form of cruel and inhuman treatment for close family members,<sup>192</sup> the Commission concludes that in the case at hand there was a violation of the right to humane treatment of the following members of Jeremías Osorio Rivera's family: Juana Rivera Lozano (mother); Alejandrina, Elena, Porfirio, Adelaida, Silvia, Mario, and Efraín Osorio Rivera (siblings); Santa Fe Gaytán Calderón (partner); and Edith Laritza, Neyda Rocío, Vanesa, and Jeremías Osorio Gaytán (children).

159. Finally, the IACHR would like to stress that this case involves the forced disappearance of a villager from Cajatambo, in the north of Lima department, who had previously been harassed by members of Shining Path. According to the CVR'S conclusions, the scourge of political violence unleashed by the insurgent groups and spread by the security forces had a particular impact on people who, like Mr. Jeremías Osorio Rivera and his family, were residents of rural areas, far away from the centers of political and economic power, which have historically reported the highest levels of poverty in the country.<sup>193</sup> Thus, the suffering endured by the victims in this case is representative of the perverse relationship that existed between social exclusion, discrimination toward the most marginalized segments of the Peruvian population, and their higher probabilities of encountering the excesses of the irregular armed groups and the abuses of the security forces.

## VI. CONCLUSIONS

160. In this report the Inter-American Commission has evaluated all the elements available in the case file in light of the human rights provisions of the inter-American system and other applicable instruments, jurisprudence, and doctrine, in order to decide on the merits of the matter brought before it. The IACHR reiterates its conclusion that the Peruvian State is responsible for violations of the rights enshrined in Articles 3, 4, 5.1, 5.2, 7, 8.1, and 25.1 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. It also repeats that the State is responsible for violating Articles I and III of the IACFDP, all with respect to Jeremías Osorio Rivera. With reference to the relatives of the victim identified in paragraph 156 *supra*, the IACHR ratifies its conclusion that the State is responsible for the violation of Articles 5.1, 8.1, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

## VII. RECOMMENDATIONS

161. Based on the analysis and conclusions of this report, the Inter-American Commission on Human Rights recommends that the Peruvian State:

1. 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.

<sup>191</sup> **Annex 24:** Testimony of Porfirio Osorio Rivera to the CVR, Testimony No. 100072, section V, "Aftermath." **Annex 28:** Testimony of Juana Rivera Lozano to the CVR, Testimony No. 101262, section titled "Aftermath."

<sup>192</sup> I/A Court H. R., *Case of Trujillo Oroza v. Bolivia*, Reparations and Costs, Judgment of February 27, 2002, Series C No. 92, para. 114; *Case of La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 125; and *Case of Anzualdo Castro v. Peru*, Judgment of September 22, 2009, Series C No. 202, para. 113.

<sup>193</sup> **Annex 3:** Final Report of the CVR, 2003, Vol. I, Chapter 3, *Faces and Profiles of the Violence*, p. 155, containing the conclusion that "the armed violence did not uniformly affect all the country's geographical regions or different social strata. It was concentrated in [...] those areas and groups that were less integrated into the centers of economic and political power within Peruvian society." Available at [www.cverdad.org.pe/ifinal/index.php](http://www.cverdad.org.pe/ifinal/index.php).

2. Pursue the domestic procedures related to the human rights violations established in this report and discharge the criminal proceedings for the crime of forced disappearance with respect to Jeremías Osorio Rivera currently underway, in an impartial and effective fashion and within a reasonable time, in order to fully clear up the incident, identify all the guilty, and impose the corresponding penalties.

3. Provide adequate redress for the human rights violations established in this report, covering both the material and moral aspects and including fair compensation, the establishment and dissemination of the historical truth of the incident, the necessary measures aimed to keep alive the disappeared victim's memory, and the implementation of a suitable program of psychosocial care for his next-of-kin.

4. 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.

5. Organize an act of public recognition of its international responsibility and extend a public apology for the violations established in this report.