

Inter-American Court of Human Rights

CASE OF NÚÑEZ NARANJO ET AL V. ECUADOR

**Judgment of May 23, 2023
(*Merits, Reparations, and Costs*)**

In the case of *Núñez Naranjo et al. v. Ecuador*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” “the Court,” or “the Tribunal”), composed of the following judges:

Ricardo C. Pérez Manrique, President;
Eduardo Ferrer Mac-Gregor Poisot, Vice President;
Humberto A. Sierra Porto, Judge;
Nancy Hernández López, Judge;
Verónica Gómez, Judge;
Patricia Pérez Goldberg, Judge, and
Rodrigo Mudrovitsch, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

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

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* – On July 10, 2021, the Inter-American Commission of Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted the case of "Fredy Marcelo Núñez Naranjo et al." to the jurisdiction of the Court with respect to the Republic of Ecuador (hereinafter "the State" or "Ecuador"). The Commission indicated that the case is related to the alleged forced disappearance of Fredy Marcelo Núñez Naranjo (hereinafter "Fredy Núñez Naranjo" or "Mr. Núñez Naranjo") and the consequent international responsibility derived from the alleged violation of his rights to juridical personality, to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection. Furthermore, in accordance with the Report on the Merits, the Commission established that the State was responsible for the violation of the rights to humane treatment, to a fair trial, and to judicial protection of the parents and sisters of Fredy Marcelo Núñez Naranjo,¹ as a result of the failures in the search, investigation, and punishment of those responsible for his enforced disappearance. Finally, the Commission argued that the State also violated the rights to a fair trial and to judicial protection of María Gregoria Naranjo and Marcia Núñez Naranjo, mother and sister of Fredy Núñez Naranjo, by not properly investigating the physical assaults they allegedly suffered.

2. *Proceedings before the Commission.* – the following proceedings took place before the Commission:

- a. *Petition.* - On December 1, 2003, the Commission received the initial petition filed by Sixto Rodrigo Núñez, Napoleón Amores, and José Santana against the State of Ecuador.
- b. *Admissibility Report.* – On March 15, 2010, the Commission approved Admissibility Report No. 02/10. This Report, in which the Commission concluded that the petition was admissible, was notified to the parties on March 30, 2010.
- c. *Report on the Merits.* – On May 4, 2019, the Commission approved Report on the Merits No. 60/19, in which it reached a set of conclusions and made several recommendations to the State.
- d. *Notification to the State.* - On July 10, 2019, the Commission notified the State with the Report on the Merits No. 60/19. The Commission gave the State two months to report on compliance with the recommendations.

3. *Submission to the Court.* – On July 10, 2021, the Commission submitted to the Inter-American Court all the facts and human rights violations set forth in the Report on the Merits, "considering the need to obtain justice and reparation for the [alleged] victims."

4. *Requests of the Commission.* – Based on the foregoing, the Inter-American Commission asked this Court to declare the international responsibility of the State for the violations of the rights enshrined in Articles 3, 4(1), 5(1), 5(2), 7, 8(1), and 25(1) of the American Convention, in relation to its Article 1(1), as well as Articles I (a) and I (b) of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "IACFDP"). Likewise, the Commission requested the Court to order the State to apply measures of reparation, which are detailed and analyzed in Chapter VIII of this judgment. This Court notes with deep concern that 17 years and 7 months have passed since the initial petition was presented to the Commission and the case was submitted to the Court.

¹ His parents, Sixto Núñez and María Gregoria Naranjo; and his sisters, Marcia and Silvia Núñez Naranjo.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representative.* - The submission of the case was notified to the State and the representative of the alleged victims² (hereinafter referred to as "the representative") through a communication dated August 25, 2021.
6. *Brief with pleadings, motions, and evidence.* - The representatives did not submit a brief with pleadings, motions, and evidence within the term provided in Article 40(1) of the Court Rules of Procedure (hereinafter the "Rules").³
7. *Answering Brief.*⁴ - On January 17, 2022, the State submitted its brief of preliminary objections answering the submission of the case (hereinafter "answering brief") pursuant to Article 41 of the Rules of Procedure of the Court. In this brief, the State submitted two preliminary objections and rejected the alleged violations and the measures of reparation requested by the Commission.
8. *Observations on the preliminary objections.* - On March 23, 2022, the Commission presented its observations on the preliminary objections raised by the State. The representatives did not present observations against these objections.
9. *Public Hearing.* - By Resolution of December 1, 2022,⁵ the President of the Court called the parties and the Commission to a public hearing that was held on February 3, 2023, during the 155th Ordinary Session of the Court, in San José, Costa Rica.⁶ During the course of the hearing, statements were received from two of the alleged victims, called by the Court ex officio, and from an expert witness who was proposed by the Commission. Furthermore, the State acknowledged its responsibility for the violation of Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument.
10. *Final written arguments and observations.* - On March 3, 2023, the Commission submitted its final written observations. On the same date, the State and the representatives submitted their respective final written arguments and annexes. In its final written arguments, the State reiterated the acknowledgement of responsibility made during the public hearing and withdrew the two

² The alleged victims are represented in the proceedings before the Court by attorney Renato Javier Villacís Tubon.

³ Through a note transmitted to the parties and the Commission on October 22, 2021, the Court Registrar, following instructions from the Presidency, granted an exceptional extension of the term to submit the brief with pleadings, motions, and evidence, in response to the request made by the representatives due to his health condition. However, such brief was also not submitted during the additional term granted, therefore, through a communication dated November 17, 2021, the Court Registrar informed the parties and the Commission that, following the instructions of the Presidency, the processing of the case would continue.

⁴ The State appointed María Fernanda Álvarez Alcívar as the principal agent and Mirella Tonato Chica, Carlos Espín Arias, and Alonso Fonseca Garcés as alternate agents.

⁵ Cf. *Núñez Naranjo et al. v. Ecuador. Call to hearing.* Resolution of the President of the Inter-American Court of Human Rights of December 1, 2022. https://www.corteidh.or.cr/docs/asuntos/nunez_naranjo_01_12_2022.pdf.

⁶ The following appeared at this hearing: a) for the Inter-American Commission: Erick Acuña Pereda and Daniela Saavedra, legal advisors of the Commission; b) the representative: Renato Javier Villacís Tubon, and c) by the State: María Fernanda Álvarez Alcívar, National Director of Human Rights; Sebastián Vallejo Constantine, Deputy Director of Human Rights; Juan Carlos Álvarez León and Alonso Fonseca Garcés, lawyers.

preliminary objections proposed in the answering brief.⁷ Subsequently, on March 17, 2023, the Commission and the State submitted their observations to the annexes to the final written arguments of the representatives and the State.

11. *Request for helpful evidence.* - On March 23, 2023, based on the provisions of Article 58(b) of the Rules, the Court requested that the State submit helpful evidence.⁸ The request was addressed on March 29th, and the response was subsequently sent to the representatives and the Commission. On April 12, 2023, the first of these parties submitted their observations and the second party indicated they had no observations.

12. *Deliberation of the case.* - The Court began deliberating this judgment on May 22, 2023.

III JURISDICTION

13. The Court has jurisdiction to hear the instant case, pursuant to Article 62(3) of the Convention, as Ecuador has been a State Party to the American Convention since December 28, 1977, and recognized the contentious jurisdiction of the Court on July 24, 1984. Furthermore, it ratified the Inter-American Convention on Forced Disappearance of Persons on July 27, 2006.⁹

IV PARTIAL ACKNOWLEDGEMENT OF RESPONSIBILITY

A. Acknowledgement of responsibility by the State and observations by the representatives and the Commission

14. During the public hearing held on February 3, 2023, the **State** partially acknowledged its international responsibility for the violation of rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument. According to Ecuador, such responsibility arises from the lack of diligence of the State in determining responsibilities and imposing corresponding sanctions in the face of the criminal offense committed to the detriment of Fredy Núñez Naranjo. Without prejudice to the foregoing, the State rejected the claim that in this case the elements of an enforced disappearance had occurred. In this regard, it pointed out that it:

⁷ In this regard, the State affirmed that "[...] as a result of this declaration, Ecuador withdraws the preliminary objections raised in its response to the submission of the case by the IACHR." *Cf.* Final arguments brief from the State (case file on the merits, page 527).

⁸ The Court asked the State to submit: "1) Domestic law regarding the creation, duties, and organization of the Peasant Defense Boards. Without prejudice to the general or specific rules of some Boards that may be provided by the State, please see Executive Decree 1963 of 1966 or the equivalent rule on which the statement made by the State in its 2015 Report to the Human Rights Committee is based (attached as Annex 20 of the State's final written arguments), according to which, the Boards are "an informal justice system," "created to prevent livestock and crop theft." In the event that this regulation has been subject to modifications, the State is requested to provide the respective rules in full, including those in force in 2001. 2) Appendix 6 of the Report submitted by the State to the United Nations Human Rights Committee on August 6, 2015, in compliance with the provisions of Article 40 of the International Covenant on Civil and Political Rights (attached as Appendix 20 of the State's final written arguments). According to the report, Appendix 6 contains information on the judicial processes initiated against members of the Peasant Defense Boards." *Cf.* Note from the Registrar of the Inter-American Court of Human Rights dated March 23, 2023 (case file on the merits, page 546).

⁹ Said instrument went into effect for the State on August 26, 2006, as set out in article XX of said Convention.

[...] rejects the accusations regarding the existence of an enforced disappearance, and in that sense [states that] the facts used to describe the existence of an enforced disappearance are not attributable to the State. However, it is undeniable that the events that form part of this case constitute a crime perpetrated by individuals; such crime should have been investigated and sanctioned by the Ecuadorian State. Although procedures were initiated, they are still ongoing and so far, have not yielded results. Therefore, the State acknowledges that it has not fulfilled its obligation to investigate and sanction, and for that reason acknowledges its responsibility under Articles 8 and 25 of the Convention on Human Rights. [...]

15. On the same occasion, the State added that:

[...] although investigations were carried out, inquiries were made, and the criminal investigation process was initiated, these inquiries have not been sufficient, and additionally, at the time, in his judicial review, the judge found what could be called negligent performance by the Prosecutor's Office, and that negligent performance is what determined the provisional stay of proceedings, and that is why the Ecuadorian State acknowledges its responsibility.

16. Subsequently, in its final written arguments, it claimed that:

The State reiterates its legal position that the events of the case do not constitute an enforced disappearance; however, it acknowledges [that] a criminal offense occurred for which private individuals were responsible, but the events of this case have not been investigated with the requisite due diligence to determine the corresponding responsibilities and criminal sanctions. Consequently: the State of Ecuador acknowledges its international responsibility for the violation of rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument.

17. Likewise, with regard to reparations, the State highlighted its efforts to comply with the recommendations included in the Report on the Merits and requested that the Court "declare that it is not appropriate to order reparations in favor of the alleged victim, as the non-existence of damages has been evidenced [...], as well as the absence of any evidentiary support."

18. The **representative** did not comment on the partial acceptance of facts and partial acknowledgement of responsibility made by the State.

19. The **Commission**, in turn, positively valued the partial acknowledgement of responsibility by the State of Ecuador. However, the Commission pointed out that it did not have detailed information about its scope. Insofar as "the public hearing does not indicate whether the admission of the violation of such rights includes all the factual and legal issues presented by the [Commission] before [the] Court on such aspects, particularly on compliance with its obligations in i) the investigation into the victim's disappearance; and ii) in the search process for his whereabouts."

B. Considerations of the Court

20. The Court will analyze the situation presented in keeping with Articles 62 and 64 of the Rules and in the exercise of its powers of international judicial protection of human rights, –a

matter of international public order– the Court must ensure that acts of acquiescence be acceptable for the purposes sought by the inter-American system.¹⁰

B.1 Facts

21. The Court verifies that the admission made by the State did not expressly refer to the facts presented by the Commission in its Report on the Merits. However, based on the statements made by the State during the public hearing and in its final written arguments, the Court understands that the admission made was based on the acceptance of some facts claimed by the Commission. This is the case, in the first place, of the facts related to the kidnapping of Fredy Núñez Naranjo from the Quero Canton police station, where he was detained on July 15, 2001, without his whereabouts being known to date.

22. The Court notes that the State disputed the legal classification of these events because, unlike what was stated by the Commission, it considers that an enforced disappearance did not occur, but rather a criminal offense for which private individuals were apparently responsible. The respective analysis will be addressed by the Court in the substantive chapter of this Judgment (*infra* paras. 81-100).

23. Furthermore, the Court finds that the partial acknowledgement of responsibility implies the acceptance of the facts presented by the Commission in its Report on the Merits in relation to the efforts made by the State within the framework of the investigation and the criminal proceeding aimed at punishing those responsible for the kidnapping of Mr. Núñez Naranjo from the aforementioned police station.¹¹

24. The Court holds that there is no dispute whatsoever about the facts mentioned *supra*.

B.2 Legal claims

25. The State conceded regarding the violations of the rights to a fair trial and to judicial protection generated as a result of the insufficient actions aimed at investigating what happened and sanctioning those responsible. This Court finds that, consequently, the dispute regarding the violation of Articles 8(1) and 25(1) of the American Convention, respectively, in conjunction with Article 1(1) of this same instrument, has ceased for the reasons mentioned, to the detriment of Fredy Núñez Naranjo and his family members.

26. A different conclusion is required, however, regarding the alleged violations of the American Convention and the IACFDP derived from the alleged enforced disappearance of Fredy Núñez Naranjo and the violations of the American Convention allegedly derived from the lack of investigation of the physical assaults allegedly suffered by Fredy Núñez Naranjo's mother and one of his sisters. None of them were the subject matter of the admission of state responsibility.

27. The Court notes, therefore, that the dispute over the alleged state responsibility persists, which results from:

a) The violation of the rights to juridical personality, to life, to humane treatment, and to personal liberty, as provided in Articles 3, 4(1), 5(1), 5(2), and 7 of the American Convention, in relation

¹⁰ Cf. *Case of Kimel v. Argentina. Merits, Reparations, and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Aguinaga Aillón v. Ecuador. Merits, Reparations, and Costs*. Judgment of January 30, 2023. Series C No. 483, para. 16.

¹¹ Cf. Paragraphs 35 to 53 of the Report on the Merits of the Commission (case file on the merits, pages 12 to 16).

to the obligations established in Article 1(1) of the same instrument, to the detriment of Fredy Núñez Naranjo, derived from his alleged forced disappearance.

b) The violation of the obligations not to practice, permit, or tolerate the forced disappearance of persons, provided for in Article I a) of the Inter-American Convention on Forced Disappearance, to the detriment of Fredy Núñez Naranjo.

c) The violation of the obligation to search for individuals who have allegedly been victims of forced disappearance, derived from Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of Fredy Núñez Naranjo and his family members.

d) The violation of the obligation to punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories, as provided in Article I b) of the Inter-American Convention on Forced Disappearance, to the detriment of Fredy Núñez Naranjo and his family members.

d) The violation of the right to humane treatment established in Article 5(1) of the American Convention in relation to the obligations established in Article 1(1) of the same instrument, to the detriment of Sixto Núñez, María Gregoria Naranjo, Marcia and Silvia Núñez Naranjo - parents and sisters of Fredy Núñez Naranjo -, as a result of the pain, anguish, and uncertainty derived from the alleged forced disappearance of the latter and the lack of clarification about what happened.

e) The violation of the rights to a fair trial and to judicial protection established in Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of María Gregoria Naranjo and Silvia Núñez Naranjo, due to the lack of an investigation aimed at determining and punishing those responsible for the injuries that they allegedly suffered.

B.3 Reparations

28. Despite having partially acknowledged its international responsibility, the State requested that the Court not order reparations. In this sense, this Court notes that the dispute regarding the measures requested under this title persists, as indicated above, so it will issue a ruling in this regard in accordance with Article 63 of the American Convention.

B.4 Conclusions: Assessment of partial acknowledgement of responsibility

29. The Court verifies that the acknowledgement of responsibility made by the State is partial as it specifically refers to the violations of Articles 8(1) and 25(1) in relation to Article 1(1) of the American Convention, due to the insufficient actions of the national authorities responsible for investigating and punishing those responsible for the kidnapping Mr. Núñez Naranjo from the police station and his subsequent disappearance.

30. The Court values this admission as it constitutes a positive contribution to the advancement of this process. In these terms, the partial admission of international responsibility made by the Ecuadorian State produces full legal effects in accordance with Articles 62 and 64 of the Rules.

31. Considering such effects, the aforementioned violations will not be analyzed by this Court since the dispute regarding them has ceased and the Court has repeated case law on the matter.¹² Notwithstanding this, the facts that led to these violations will be set out in the corresponding section (*infra* paras. 38 to 62). Likewise, these will be taken into account for the purpose of determining their potential consequences, particularly in terms of reparations.

32. The Court therefore deems it necessary to issue a judgment determining the facts that occurred, according to the evidence gathered in this process, and to examine the alleged human rights violations not included in the partial admission of state responsibility. Therefore, in this judgment, the Court will assess Ecuador's potential international responsibility for (i) the alleged forced disappearance of Fredy Núñez Naranjo and the consequent violation, to his detriment, of Articles 3, 4(1), 5(1), 5(2), and 7 of the American Convention, as well as Article I a) of the IACFDP; (ii) the violation of the search obligations, derived from Articles 8(1) and 25(1) of the American Convention, and of investigation and punishment, provided for in Article I b) of the IACFDP to the detriment of Fredy Núñez Naranjo and his family members; (iii) the violation of Article 5(1) of the American Convention to the detriment of the latter; and (iv) the violation of Articles 8(1) and 25(1) of the American Convention, to the detriment of María Gregoria Naranjo and Marcia Núñez Naranjo, as a result of the lack of investigation and punishment for the physical aggressions they suffered. Likewise, the Court will rule on the reparations measures, taking into account the relevant statements made by the parties and the Commission.

¹² Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Leguizamón Zaván et al. v. Paraguay. Merits, Reparations, and Costs*. Judgment of November 15, 2022. Series C No. 473, para. 26.

V EVIDENCE

A. Admissibility of the documentary evidence

33. The Court received various documents submitted as evidence by the Commission¹³ and by the State,¹⁴ which were admitted under Article 57 of the Rules of Procedure, because they were

¹³ Annexes to the brief of submission of the case: Annex 1. Private accusation by Sixto Núñez Naranjo against the fourth criminal judge on May 8, 2002 (case file of evidence, pages 4 to 9); Annex 2. Official Letter No. 2070-PJT-CP9-2001 from the Chief of the Judicial Police of Tungurahua to the Prosecutor of Tungurahua (case file of evidence, pages 11 to 18); Annex 3. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, pages 20 to 26); Annex 4. Corresponds to the same document as Annex 3; Annex 5. Police Report No. 1376-CP9-2001 of October 18, 2001 (case file of evidence, pages 29 to 31); Annex 6. Version translated by Sixto Núñez on April 29, 2002 before the Prosecutor of Tungurahua (case file of evidence, pages 33 and 34); Annex 7. Statement of MV rendered on August 15, 2001 (case file of evidence, pages 36 and 37); Annex 8. Corresponds to the same document as Annex 5; Annex 9. Official letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Chief Prosecutor of Tungurahua on June 30, 2002 (case file of evidence, pages 39 and 40); Annex 10. Provisional stay of proceedings order from the Fourth Criminal Court of Tungurahua dated December 11, 2002 (case file of evidence, pages 42 to 49); Annex 11. Recognition of the facilities of the National Police of Quero carried out by the Fiscal Delegation of the Tungurahua District on April 26, 2002 (case file of evidence, pages 51 and 52); Annex 12. Corresponds to the same document as Annex 1; Annex 13. Resolution of the Fourth Criminal Court of Tungurahua on May 10, 2002 (case file of evidence, pages 54 to 57); Annex 14. Habeas corpus petition filed before the Tungurahua Superior Court of Justice on July 11, 2002 (case file of evidence, pages 59 to 68); Annex 15. Report from the Fourth Substitute Criminal Judge of Tungurahua to the Tungurahua Superior Court of Justice on July 17, 2002 (case file of evidence, pages 70 to 73); Annex 16. Resolution of the Second Chamber of the Superior Court of Justice of Tungurahua on July 31, 2002 (case file of evidence, pages 75 to 81); Annex 17. Preliminary hearing minutes of the Fourth Criminal Court of Tungurahua Substitute of December 11, 2002 (case file of evidence, pages 83 and 84); Annex 18. Corresponds to the same document as Annex 10; Annex 19. Official Letter No. 3585-CP9-2004 from the Chief of the Judicial Police of Tungurahua dated October 15, 2004 (case file of evidence, page 86) and Copy of the case file before the Commission (case file of evidence, pages 87 to 1448).

¹⁴ Annexes to the answering brief: Annex 1. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, pages 1452 to 1458); Annex 2. Resolution initiating the public prosecutor's investigation of Ecuador dated May 8, 2002 (case file of evidence, pages 1460 to 1463); Annex 3. Request for a Summons to Trial filed by the prosecutor on September 23, 2002 (case file of evidence, pages 1465 to 1470); Annex 4. Preliminary hearing minutes of the Fourth Criminal Court of Tungurahua on December 10 and 11, 2001 (case file of evidence, pages 1472 to 1503); Annex 5. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, pages 1512 and 1513); Annex 6. Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, pages 1515 to 1517); Annex 7. Official Letter No. FGE-CGAJP-DDHPC-2021-007878-O from the Prosecutor General's Office of December 16, 2021 (case file of evidence, pages 1519 to 1521); Annex 8. Brief presented by Sixto Núñez before the Fourth Criminal Judge on August 13, 2002 (case file of evidence, folio 1523); Annex 9. Official Letter No. 406-MFDT-BP-02 from the Prosecutor of Tungurahua on August 13, 2002 (case file of evidence, page 1525); Annex 10. Police report from July 15, 2001 at 4:00 PM (case file of evidence, page 1527); Annex 11. Police report from July 15, 2001 at 5:30 PM (case file of evidence, page 1529); Annex 12. Corresponds to the same document as Annex 1; Annex 13. Protocol for the action, search, and investigation of missing persons issued by Resolution of the Judiciary Council 160 recorded in the Official Gazette 875 of January 21, 2013 (case file of evidence, pages 1539 to 1546); Annex 14. Compliance report before the Inter-American Commission on Human Rights on the Case of Fredy Marcelo Núñez Naranjo et al., Case No. 12,744, from the Human Rights Registrar of September 2019 (case file of evidence, pages 1549 to 1551); Annex 15. Memorandum No. FPT-FCQ-2020-00057-M from the Prosecutor General's Office of October 26, 2020 (case file of evidence, pages 1553 and 1554); Annex 16. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, pages 1556 and 1557); Annex 17. Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, pages 1559 to 1561); Annex 18. Compliance report before the Inter-American Commission on Human Rights on the Case of Fredy Marcelo Núñez Naranjo et al., Case No. 12,744, from the Human Rights Registrar of October 2020 (case file of evidence, pages 1563 to 1572); Annex 19. Compliance report before the Inter-American Commission on Human Rights on the Case of Fredy Marcelo Núñez Naranjo et al., Case No. 12,744, from the Human Rights Registrar of June 2021 (case file of evidence, pages 1574 to 1583); Annex 20. Compliance report before the Inter-American Commission on Human Rights in the Case of Fredy Marcelo Núñez Naranjo et al., Case No. 12,744 of December 2020 (case file of evidence, pages 1585 to 1604), and Annex 21. Compliance report on the Case of Fredy Marcelo Núñez Naranjo et al., Case No. 12,744, from the Ministry of Administration of December 2020 (case file of evidence, folios 1607 to 1613).

submitted at the proper procedural opportunity.¹⁵ Likewise, it accepts as documentary evidence the expert opinion given through an affidavit by Andrés González Serrano in the Case of *Guachalá Chimbó et al. v. Ecuador*, incorporated into the body of evidence of the instant case, at the request of the State,¹⁶ and the documents provided by it in response to the Court's request for helpful evidence.¹⁷

¹⁵ Cf. *Case of the Barrios Family v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Olivera Fuentes v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 4, 2023. Series C No. 484, para. 39.

¹⁶ Cf. *Case of Núñez Naranjo v. Ecuador. Call to hearing*. Order from the President of the Inter-American Court of Human Rights of December 1, 2022, resolution point 9.

¹⁷ Following instructions from the President of the I/A Court H.R. and based on Article 58(b) of the Rules of Procedure of the Court, the State was asked to submit the following documents to this Court as helpful evidence: "1) Domestic law regarding the creation, duties, and organization of the Peasant Defense Boards. Without prejudice to the general or specific rules of some Boards that may be provided by the State, please submit Executive Decree 1963 of 1966 or the equivalent rule on which the statement made by the State in its 2015 Report to the Human Rights Committee is based (attached as Annex 20 of the State's final written arguments), according to which, the Boards are 'an informal justice system,' 'created to prevent livestock and crop theft.' In the event that this regulation has been subject to modifications, the State is requested to provide the respective rules in full, including those in force in 2001. 2) Annex 6 of the Report submitted by the State to the United Nations Human Rights Committee on August 6, 2015, in compliance with the provisions of Article 40 of the International Covenant on Civil and Political Rights (attached as Annex 20 to the State's final written arguments). According to the report, Appendix 6 contains information on the judicial processes initiated against members of the Peasant Defense Boards." In response to such request, the State sent numerous annexes, of which only Annex 7 to the respective communication is admitted: "Table erroneously referred to as Table I Lynchings (Annex 6-Ministry of Justice and Human Rights) submitted to the United Nations Human Rights Committee on August 6, 2015, in compliance with the provisions of Article 40 of the Covenant on Civil and Political Rights"(Specifically requested by the I/A Court H.R.) (case file on the merits, pages 590 and 591).

34. Similarly, by virtue of the provisions of Article 58 of the Rules of Procedure, the Court admits the documentary evidence provided by the State¹⁸ and the representative¹⁹ that were requested by the Court during the public hearing on the grounds that this Court deems them helpful to resolving the instant case.

¹⁸ Annexes 1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 presented along with the State's final written arguments. These annexes contain: Annex 1. Domestic regulations of the Puñachizag community, belonging to the Quero Parish, Quero Canton (case file of evidence, pages 1616 to 1654); Annex 2. Police report addressed to the Provincial Chief of the Tungurahua Police Command on July 15, 2001 at 5:30 pm (case file of evidence, page 1656); Annex 3. Police report addressed to the National Police Commissioner of the Quero Canton on July 15, 2001 at 4:00 pm (case file of evidence, page 1658); Annex 4. Police report addressed to the Provincial Commander of the Tungurahua Police on July 15, 2001 at 7:00 pm (case file of evidence, page 1660); Annex 5. Official Letter No. FGE-CGAJP-DDHPC-2023-000903-O from the Prosecutor General's Office of January 31, 2023 (case file of evidence, pages 1662 to 1689); Annex 6. Bylaws of the Provincial Federation of Peasant Defense Boards of Tungurahua approved by Executive Agreement No. 103 of October 10, 1966 (case file of evidence, pages 1691 to 1707); Annex 7. Ley de Organización y Régimen de las Comunas published in Official Gazette No. 315 of April 16, 2004 (case file of evidence, pages 1709 to 1715); Annex 9. Judgment No. 1779-18-EP/21 from the Constitutional Court of Ecuador of July 28, 2021 (case file of evidence, pages 1748 to 1776); Annex 10. Official Letter No. MAGDFAA-2023-0010-OF from the Ministry of Agriculture and Livestock of January 16, 2023 (case file of evidence, pages 1778 to 1783); Annex 11. Complaint No. 180201823010012 for the crime of occupation, illegal land use or land trafficking by the Prosecutor General's Office (case file of evidence, page 1785); Annex 12. Complaint No. 180101818020088 for the crime of intimidation by the Prosecutor General's Office (case file of evidence, page 1787); Annex 13. Complaint No. 180101814090057 for the crime of intimidation by the Prosecutor General's Office (case file of evidence, page 1789); Annex 14. Complaint No. 180101814080079 for the crime of threat by the Prosecutor General's Office (case file of evidence, page 1791); Annex 15. Report No. FGE-DNSPAVT-2023-021 from the Prosecutor General's Office of February 2, 2023 (case file of evidence, pages 1793 to 1827); Annex 16. Resolution A/HRC/4/42/Add.2 of the United Nations General Assembly dated February 23, 2007 containing the Report of the Working Group on the Use of mercenaries as a means to violate human rights and hinder the exercise of peoples' right to self-determination (case file of evidence, pages 1829 to 1850); Annex 17. UN Committee against Torture Resolution CAT/C/ECU/CO/4-6 of December 7, 2010, containing the Examination of the reports submitted by the States Parties pursuant to Article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (case file of evidence, pages 1852 to 1862); Annex 18. Resolution A/HRC/17/28/Add.2 of the United Nations General Assembly dated May 9, 2011 containing the Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Philip Alston (case file of evidence, pages 1864 to 1894); Annex 19. Resolution A/HRC/23/47/Add.3 of the United Nations General Assembly dated March 18, 2013 containing the Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Christof Heyns (case file of evidence, pages 1896 to 1921); Annex 20. CCPR/C/ECU/6 Committee on Human Rights Resolution of November 3, 2015 containing the Examination of the reports submitted by States parties under Article 40 of the International Covenant on Civil and Political Rights, in accordance with the optional reporting procedure (case file of evidence, pages 1923 to 1960).

¹⁹ Seven video links from local media outlets featuring public interventions by Mr. RBV, President of the Peasant Defense Boards.

35. The Court rejects the remaining documents submitted by the State²⁰ and the representatives,²¹ given that neither party claimed circumstances of force majeure or serious impediment aimed at justifying the late submission of such documents, these were not requested by the Court, nor are they useful for the resolution of this case.

B. Admissibility of the testimonial and expert evidence

36. The Court deems it appropriate to admit the expert opinion and the statements provided in a public hearing,²² insofar as they comply with the purpose defined by the President in the order to receive them, and are related to the subject matter of this case.²³

VI FACTS

37. In this chapter, the Court will establish the facts based on the factual framework submitted by the Commission, the State's partial acknowledgement of responsibility, the supplementary facts related by the State in its answering brief, as well as the body of evidence that has been admitted.²⁴ The facts will be presented in the following order: a) those relating to the communities of Quero Canton and the Peasant Defense Boards; b) the arrest and subsequent disappearance of Fredy Núñez Naranjo, and c) subsequent facts and actions.

A. The communities of Quero Canton and the Peasant Defense Boards

38. The Ecuadorian territory is administratively divided into Regions, Provinces, Cantons, and rural or urban Parishes.²⁵ Within such divisions, Communes or Communities²⁶ can be found to be

²⁰ Annex 8 to the State's final written arguments: Organic Law of Citizen Participation published in the Official Gazette Supplement No. 175 of April 20, 2010 (case file of evidence, folios 1717 to 1746). Annexes 2, 3, 4, and 5 sent by the State in response to the Court's request for additional evidence to better resolve: Annex 2. Legal status of the Rural Communities and Law of Organization and Regime of the Communes of February 7, 1959 (case file on the merits, pages 564 to 570); Annex 3. Legal bylaws of Peasant Communities, published in Official Gazette No. 188 of October 7, 1976 and last amendment published in the Official Gazette Supplement No. 544-9-III-2009 (case file on the merits, pages 572 to 576); Annex 4. Guidelines for approving domestic regulations and recognizing the legal status of the country's rural communities published in the Official Gazette No. 715 of November 29, 2002 and last amendment published in the Official Gazette 74, 5-V-2003 (case file on the merits, pages 578 to 580) and Annex 5. Law of Organization and Regime of the Communes (Code No. 2004-04) published in Official Gazette No. 315 of April 16, 2004 (case file on the merits, pages 582 to 588). The Court notes that annexes 1 and 6, announced by the State at this same procedural moment, were not effectively sent. These annexes apparently contained: Annex 1. Statute of the Provincial Federation of Peasant Defense Boards of Tungurahua, issued by Executive Agreement No. 103, of October 10, 1966. Annex 6. Organic Law of Rural Lands and Ancestral Territories-Regulation of the Official Gazette No. 711 of March 14, 2016 - Last amendment (Second Supplement of the Official Gazette 29, 25-III-2022)

²¹ Annexes to the final written arguments of the representative, containing: Annex 1. Estimated annual income of the alleged victims from their own business (case file on the merits, page 435); Annex 2. Estimated annual income of Fredy Núñez Naranjo as a professional driver (case file on the merits, page 437); Annex 3. Rental fee value of Marcia Núñez from 2001 to 2007 (case file on the merits, page 439); Annex 4. Value of the lease fee for the property of María Gregoria Naranjo from 2002 to 2008 (case file on the merits, page 441); Annex 5. Representative's fees (case file on the merits, page 443) and Annex 6. Total sum of the items presented in the previous annexes (case file on the merits, page 445).

²² Statements were received from Sixto Núñez, María Gregoria Naranjo, and from the expert María Clara Galvis Patiño.

²³ The subject matter of the statements is established in the Resolution of the President of the Court of December 1, 2022.

²⁴ It is clarified that, in cases where the narration of facts fails to provide evidence, they are deemed established due to the lack of dispute from the parties.

²⁵ Cf. Final arguments brief from the State of March 3, 2023 (case file on the merits, pages 449 and 450).

²⁶ Cf. Articles 1 and 2. Law of Organization and Regime of the Communes of April 16, 2004 (case file of evidence, page 1709).

established. Quero Canton is part of Tungurahua Province, located in the Central Highlands of Ecuador.²⁷ The canton seat is located in the Quero urban parish.²⁸ Within the same canton, just a few kilometers from the canton seat, the communities of Puñachizag and Shaushi are found.²⁹

39. At the time of the events, members of these communities were part of the "Provincial Federation of Peasant Defense Boards of the Province of Tungurahua,"³⁰ established in that same province in 1966,³¹ and also of the "Central Board of Peasants of Quero Canton," incorporated on February 10, 1984.³² The first of these organizations was created with the purpose of bringing together the Peasant Defense Boards of the province as a form of social organization recognized by Ecuadorian domestic regulations. Their purpose is to defend the "rights and interests" common to its members.³³ The State did not provide the requested information on the current legal status of Peasant Defense Boards. However, evidence has been shown that they were active in Quero Canton and were recognized by the State.³⁴

B. Detention and subsequent disappearance of Fredy Núñez Naranjo

40. Fredy Núñez Naranjo was 27 years old at the time of his disappearance and he lived in the city of Quero. He was a professional driver and helped in the family business, a billiard table establishment where alcoholic beverages were occasionally sold, located in the same city.³⁵ He is the son of Sixto Núñez and María Gregoria Naranjo; and brother of Marcia and Silvia Núñez Naranjo.³⁶

41. On July 15, 2001, a confrontation erupted between Fredy Núñez Naranjo and OM after OM caused a disturbance in the aforementioned family business due to María Gregoria Naranjo's refusal to sell alcoholic beverages to him.³⁷ According to a subsequent statement from OM, the quarrel apparently started as a result of Mr. Núñez Naranjo's theft of the money obtained from "the sale of [a] young bull."³⁸ As a consequence of the altercation, OM sustained injuries.³⁹

42. Around 4:00 PM, the Police went to the scene of the disturbance and arrested Fredy Núñez

27 Cf. Final arguments brief from the State of March 3, 2023 (case file on the merits, page 450).

28 Cf. Final arguments brief from the State of March 3, 2023 (case file on the merits, page 450)

29 Cf. Brief of final arguments from the State of March 3, 2023 (case file on the merits, pages 519 and 520)

³⁰ Also known as "Consortium of Peasant Boards of Tungurahua." Cf. Police Report No. 1123-PJT-CP9- 2001 of August 16, 2001 (case file of evidence, pages 13 and 16).

³¹ Cf. Statutes of the Provincial Federation of Peasant Defense Boards of Tungurahua approved by Executive Agreement No. 103 of October 10, 1966 (case file of evidence, page 1695).

32 Cf. Official letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Chief Prosecutor of Tungurahua on June 30, 2002 (case file of evidence, page 39).

³³ Cf. Article 2. Statutes of the Provincial Federation of Peasant Defense Boards of Tungurahua approved by Executive Agreement No. 103 of October 10, 1966 (case file of evidence, page 1696).

³⁴ Cf. Brief of final arguments from the State dated March 3, 2023 (case file on the merits, page 458); Article 1 of the Statutes of the Provincial Federation of Peasant Defense Boards of Tungurahua approved by Executive Agreement No. 103 of October 10, 1966 (case file of evidence, page 1696) and Official Letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Fiscal Minister of Tungurahua on June 30, 2002 (case file of evidence, page 39).

³⁵ Cf. Report on the Merits of the Commission from May 4, 2019 (case file on the merits, page 11) and State's final arguments Brief from March 3, 2023 (case file on the merits, page 458).

36 Cf. Report on the Merits of the Commission of May 4, 2019 (case file on the merits, page 11)

³⁷ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 23).

38OM statement of October 18, 2001 given within Case No. 1128-PJT-CP9-2001 (case file of evidence, page 345) and Police Report No. 1376-CP9-2001 of October 18, 2001 (case file of evidence, page 31).

³⁹ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 23).

Naranjo and OM, as well as a third person, who was intoxicated and directed insults at the police officers, demanding the release of OM.⁴⁰ The three men were transferred to the Quero Canton Police Station jail cells.⁴¹

43. About an hour later,⁴² a group of around 400 individuals⁴³ from the Puñachizag and Shaushi communities⁴⁴ arrived at the police station⁴⁵ and freed OF and OM, who were members of the Puñachizag community.⁴⁶ Said group also took Fredy Núñez Naranjo, Gregoria Naranjo, and Marcia Núñez Naranjo as hostages. The latter two individuals were found outside the police station.⁴⁷

44. At the time of Fredy Núñez Naranjo's kidnapping, the Quero Canton police station was guarded by at least two police officers and a police commissioner.⁴⁸ It has not been proven that any of them took specific actions to prevent the Núñez Naranjo family members from being taken into custody.⁴⁹

45. The three detained individuals were relocated to the Puñachizag community,⁵⁰ situated three kilometers from the police station, where they were subjected to physical assaults.⁵¹ Subsequently, Gregoria Naranjo and Marcia Núñez Naranjo were taken to the community of

⁴⁰ Cf. Police report addressed to the Quero Canton National Police Station on July 15, 2001 at 4:00 PM (case file of evidence, page 1658).

⁴¹ Cf. Police Report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, page 16).

⁴² Some evidence suggests that the crowd arrived "an hour and a half" after the arrest, and others indicate that the aforementioned occurred "half an hour" later. Cf. Police Report addressed to the Provincial Chief of the Tungurahua Police Command on July 15, 2001 at 17:30 hours (case file of evidence, page 1656); Police Report addressed to the Provincial Police Commander of Tungurahua on July 15, 2001 at 19:00 hours (case file of evidence, page 1660); Police Report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, page 16).

⁴³ Cf. Paragraphs 31 and 62 of the Report on the Merits of the Commission of May 4, 2019 (case file, page 11); page 5 of the State's Answering Brief (case file on the merits, page 158) and Police Report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, page 24).

⁴⁴ Cf. Declaration given by Sixto Núñez on April 29, 2002 before the Prosecutor of Tungurahua (case file of evidence, page 33) and final oral arguments presented by the State during the Public Hearing held on February 3, 2023 within the framework of the 155th Regular Session.

⁴⁵ According to a statement made by Sixto Núñez to the district attorney of Tungurahua, those who entered "[m]ake noise and pus[h] the doors of the Police Station, and enter through both doors." Cf. Statements made by Sixto Núñez on April 29, 2002 before the district attorney of Tungurahua (case file of evidence, page 34). According to a police report, those who appeared at the "had proceeded to breach the security of the [police] station." Cf. Police report addressed to the Provincial Police Commander of Tungurahua on July 15, 2001 at 7:00 PM (case file of evidence, page 1660).

⁴⁶ Cf. Police report addressed to the Provincial Police Commander of Tungurahua, July 15, 2001 at 7:00 PM (case file of evidence, page 1660).

⁴⁷ Cf. Police Report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, page 24).

⁴⁸ Cf. Testimonial statements of MV and LPV given on August 15, 2001 (case file of evidence, pages 37 and 322).

⁴⁹ One of the police officers who arrived at the scene of the brawl and later participated in the arrest and transfer of Fredy Núñez Naranjo to the jail cell of the Police Station stated that, at the time of the kidnapping, "[no] action was take[n] due to the number of community members who we[re] around the station, taking the hostages in an unknown direction." Cf. Testimonial statement of MV given on August 15, 2001 (case file of evidence, pages 36 and 37).

⁵⁰ This is indicated in one of the police reports issued that day. Cf. Police Report addressed to the Provincial Police Commander of Tungurahua, July 15, 2001 at 19:00 hours /case file of evidence, page 1660).

⁵¹ According to Sixto Núñez, "they b[lindfolded] [all] three of them and tied their hands behind their backs, beating them mercilessly." Cf. Version given by Sixto Núñez on April 29, 2002 before the district attorney of Tungurahua (case file of evidence, page 34) and Provisional stay of proceedings by the Fourth Criminal Court of Tungurahua of December 11, 2002 (page 45 of the case file of evidence). According to Police Report No. 1123-PJT-CP9-2001 of August 16, 2001, Ms. Naranjo and Núñez were "flogged" in the community of Puñachizag (case file of evidence, folio 16). According to María Gregoria Naranjo, she and her daughter Marcia Núñez Naranjo "[they] hit [them], but not too hard." Cf. Statement by María Gregoria Naranjo given at the public hearing on February 3, 2023.

Shaushi, located approximately one kilometer from the community of Puñachizag,⁵² where they were later released.⁵³ Fredy Núñez Naranjo, however, was put into a vehicle "with an unknown destination,"⁵⁴ and since then, his whereabouts have been unknown.

46. There are several versions regarding the fate that the alleged victim may have suffered. According to his father, after releasing the women, one member of the Puñachizag community ordered five hooded men to interrogate Fredy, and each response was followed by blows and shouts, until, finally, "everything fell silent."⁵⁵ Sixto Núñez also noted having heard that his son "has been burned [and] that he has been thrown into the water."⁵⁶ Finally, according to other versions (*infra* paras. 48 and 58), Fredy Núñez apparently escaped from the jail cell where he was being held.⁵⁷ None of these versions has been corroborated.

C. Facts and actions following the disappearance of Fredy Núñez Naranjo

47. On the same day as the disappearance of the alleged victim -July 15, 2001- two police reports were issued regarding what happened. One of them, signed by one of the police officers present at the police station and addressed to the Provincial Chief of the Tungurahua Police Command, describes what happened.⁵⁸ The other, addressed to the Provincial Police Commander of Tungurahua at 7:00 PM and signed by a police lieutenant, indicates that, after having gone with two officers and 15 police officers to "verify developments at the Quero Canton Police Station," the unit chief briefed them on the events, including the detention of the three individuals, who were then taken in the direction of the Puñachizag community. After that, "efforts were made to locate the individuals [...] without yielding positive results."⁵⁹

48. On July 18, 2001, a police officer traveled to the community of Puñachizag to request information about the whereabouts of Fredy Núñez Naranjo. There, he met with the President of the Consortium of Peasant Boards of Tungurahua, who reported that the neighbors from the communities of Puñachizag and Shaushi "have limited themselves to communicating that [...] Fredy [...] has proceeded to flee from the community's jail cell [...], the same night of July 15."⁶⁰

49. On July 23, 2001, the father of the alleged victim filed a complaint with the Judicial Police of

⁵² According to the map submitted in the State's final arguments, at the request of the Court, the communities of Puñachizag and Shaushi are each 3 kilometers away from the Quero Police Station. Although the distance separating the two communities was not expressly indicated, the map shows that both are located to the southwest of the station and that the roads leading to each intersect the station. *Cf.* Brief of final arguments from the State dated March 3, 2023 (case file on the merits, page 520). Based on this information, the Court notes as a matter of public record that the two communities are approximately 1 kilometer apart.

⁵³ *Cf.* Police report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, page 24).

⁵⁴ *Cf.* Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 24).

⁵⁵ *Cf.* Provisional stay of proceedings order from the Fourth Criminal Court of Tungurahua dated December 11, 2002 (case file of evidence, page 45).

⁵⁶ *Cf.* Statement given by Sixto Núñez on April 29, 2002, before the district attorney of Tungurahua (case file of evidence, page 34).

⁵⁷ *Cf.* Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 25) and Official Letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Chief Prosecutor of Tungurahua on June 30, 2002 (case file of evidence, page 39).

⁵⁸ *Cf.* Police report addressed to the Provincial Chief of the Tungurahua Police Command on July 15, 2001 at 5:30 PM (case file of evidence, page 1656).

⁵⁹ *Cf.* Police report addressed to the Provincial Police Commander of Tungurahua on July 15, 2001 at 7:00 PM (case file of evidence, page 1660).

⁶⁰ *Cf.* Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, pages 21 and 22).

Tungurahua for the disappearance of his son.⁶¹

50. On July 29, 2001, a demonstration march of around "four thousand peasants from the communities of the Quero Canton who are part of the Consortium of Peasant Boards" publicly expressed their repudiation of the abuses perpetrated by criminal groups made up of local members, among whom, they claimed, was Fredy Núñez Naranjo.⁶²

51. On August 2, 2001, the mother of the alleged victim filed a complaint through the Ecumenical Commission for Human Rights (CEDHU) for the disappearance of her son.⁶³

52. On August 13, the Inspector General of the National Police called for the initiation of investigations.⁶⁴ On August 15, 2001, statements from two police officers were received. The first of them, who participated in the arrest of the alleged victim, stated that the Provincial Commander was aware of what might have happened to the alleged victim but that, even so, the authorities of that locality "have not taken action on the matter."⁶⁵ The second in command of the police station from which Fredy Núñez Naranjo was taken stated that "we have reached out to various authorities of the canton to inquire about the whereabouts of Fredy Núñez Naranjo, without receiving any collaboration from anyone on the matter."⁶⁶

53. On August 16, 2001, a police report was issued in which the procedures performed were recorded.⁶⁷ In it, it was noted that the immediate family of the alleged victim refused to provide information due to the fear arising from the threats they had endured.⁶⁸ Furthermore, it was concluded that, based on the preliminary investigation conducted, the members of the Puñachisag and Shaushi communities who participated in the kidnapping and subsequent transfer of Fredy Núñez Naranjo had apparently been "led by Mr. [RBV], who served as President of the Central Boards of Peasants of the Quero Canton, as well as [by] Messrs. [AV], [BT], [OM] and [OF]; members of the mentioned communities," would apparently had "direct participation in the kidnapping [... as well as in] the threats directed at [the] family members."⁶⁹ Similarly, it was pointed out as "pending work" to "try to locate and find citizen Freddy Marcelo Núñez Naranjo."⁷⁰

54. Subsequently, the father of the alleged victim filed another complaint with the District Attorney of Tungurahua, which was legally recognized on August 18, 2001.⁷¹ In it, he indicated

⁶¹ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 13).

⁶² Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 24).

⁶³ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 12).

⁶⁴ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 12).

⁶⁵ Cf. Testimonial statement of MV of August 15, 2001 (case file of evidence, page 37).

⁶⁶ Cf. Testimonial statement of LAPV of August 15, 2001 (case file of evidence, page 323).

⁶⁷ Cf. Police report No. 1123-PJT-CP9-2001 from August 16, 2001 (case file of evidence, pages 20 to 26).

⁶⁸ Regarding: i) Sixto Núñez "stat[ed] that [...] he cannot provide [...] information about the disappearance of his son, due to threats by all the members of the Puñachisag and Shaushi Community, who are led by Mr. [RBV, ...] President of the Central Board of Peasants of the Quero Canton, as well as Mr. [AV], a resident of the Puñachisag community"; ii) María Gregoria Naranjo refused to provide information because her two daughters and grandchildren were living in the city of Quero and therefore "we[re] in grave danger due to threats from the members of the Puñachisag and Shaushi communities", and iii) Silvia Núñez Naranjo "sta[ted] that she cannot provide [...] information [...because] she is living in the Quero Canton under conditions and threats from the members of the Puñachisag and Shaushi Community." Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 22).

⁶⁹ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 25).

⁷⁰ Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 15).

⁷¹ Cf. Resolution of the Fourth Criminal Court of Tungurahua dated May 10, 2002 (case file of evidence, page 56).

that his son's disappearance had been perpetrated by members of the Puñachizag and Shaushi communities, who included RBV.⁷²

55. On October 18, an expanded report was issued in which it was noted that several individuals from the Puñachizag community made death threats and threats of property destruction to the parents of the alleged victim to "force them to abandon their properties in Quero Canton."⁷³ It is also noted that Marcia and Silvia Núñez Naranjo, as well as their respective families, were "threaten[e]d with being evicted from their homes if they reported the incident."⁷⁴ Similarly, the report mentioned mentioned that eight statements were taken.⁷⁵

56. On November 21, 2001, the preliminary investigation was initiated,⁷⁶ and several additional statements were received.⁷⁷ In this context, on April 26, 2002, that is, more than nine months after the kidnapping of Fredy Núñez Naranjo, a recognition was carried out at the Quero Canton police station facilities, where the alleged victim was being held. However, no material damages were found.⁷⁸

57. On May 8, 2002, the District Attorney of Tungurahua filed a charge for the criminal offense of kidnapping against seven individuals, ordered their statements to be taken, and referred the case to the Fourth Criminal Court of Tungurahua.⁷⁹ On May 10, 2002, said judicial authority ordered pretrial detention for the seven accused parties, as alleged perpetrators of the crime of kidnapping, and also charged them with the crime of conspiracy for civil unrest.⁸⁰ The respective arrest warrants were issued on June 14, 2002.⁸¹

58. On June 30, 2002, the Central Board of Peasants requested that the Tungurahua Prosecutor

⁷² Cf. Resolution of the Fourth Criminal Court of Tungurahua dated May 10, 2002 (case file of evidence, page 56).

⁷³ Cf. Police Report No. 1376-CP9-2001 of October 18, 2001 (case file of evidence, page 31).

⁷⁴ Cf. Police Report No. 1376-CP9-2001 of October 18, 2001 (case file of evidence, page 31).

⁷⁵ Cf. Police Report No. 1376-CP9-2001 of October 18, 2001 (case file of evidence, page 30); Statement of Sixto Núñez Naranjo before the National Directorate of Judicial Police and Investigations of October 16, 2001 (case file of evidence, page 347); and Statements of October 18, 2001 made before the National Directorate of Judicial Police and Investigations by RBV (case file of evidence, page 352), LASBC (case file of evidence, page 358), OM (case file of evidence, page 345), BT (case file of evidence, page 360), AV (case file of evidence, page 362), FAJL (case file of evidence, page 350), EACV (case file of evidence, page 356) and MUBS (case file of evidence, page 354). Five of these individuals "indica[te]d that they had been performing private activities during that day, and knew absolutely nothing about the events and facts being investigate[d]." This refers to BT, LASBC, FAJL, EACV, and MUBS. Cf. Police Report No. 1376-CP9-2001 of October 18, 2001. OM outlined the reasons of the quarrel with Fredy Núñez and Sixto Núñez reiterated what was previously narrated (case file of evidence, page 31).

⁷⁶ Cf. Official Letter No. 01071 of May 7, 2015 from the State Prosecutor General's Office (case file of evidence, page 949).

⁷⁷ The statement was received from: i) MAE, Police Commissioner who was at the police station on the day of the events, who indicated that she could not identify the individuals because they broke in suddenly and that it was a large group of 400 individuals and ii) MMCL and Sixto Núñez Naranjo, who corroborated what happened at the police station, regarding the intervention of 400 community members on July 15, 2001. Cf. Resolution initiating the Public Prosecutor's investigation of Ecuador dated May 8, 2002 (case file of evidence, pages 1461 to 1462).

⁷⁸ Cf. Recognition of the facilities of the National Police of Quero carried out by the Fiscal Delegation of the Tungurahua District on April 26, 2002 (case file of evidence, pages 51 and 52).

⁷⁹ Cf. Resolution of the Fourth Criminal Court of Tungurahua dated May 10, 2002 (case file of evidence, pages 1462 and 1463).

⁸⁰ Cf. Resolution of the Fourth Criminal Court of Tungurahua of May 10, 2002 (case file of evidence, pages 56 and 57).

⁸¹ Cf. Capture warrants from June 14, 2002 by the Fourth Criminal Court of Tungurahua issued against MUBS (case file of evidence, page 392); EACV (case file of evidence, page 394); FAJL (case file of evidence, page 395); LASBC (case file of evidence, page 396); BT (case file of evidence, page 397); RBV (case file of evidence, page 398) and AV (case file of evidence, page 399).

release the detained individuals. On the matter, they said that "the only crime we commit is living off our work and in some way fig[ht]ing criminals." Likewise, it mentioned "although it is true that the peasantry, tired of enduring the abuses, robberies, and murders committed by Fredy Marcelo Núñez Naranjo together with his gang of highway robbers, had taken him to the peasant board jail cells." Finally, he added that, "certain that you will respond favorably to this request and not have any issues to that effect, because otherwise, the high level of respect we have for the authorities and the Police, we would not want to get into any trouble or confrontation."⁸²

59. On July 11, 2002, the accused parties filed a remedy of amparo for release against the Fourth Criminal Judge of Tungurahua, before the Superior Court of Justice of Tungurahua. The plaintiffs argued a lack of legal reasoning, violations of due process, and a lack of legal certainty.⁸³ On July 31, 2002, the Second Chamber of the Superior Court of Justice of Tungurahua granted the amparo remedy, arguing that, although there were sufficient indications to determine that a public action crime existed, there was a lack of clear and precise indications to prove that the accused parties were the perpetrators or accomplices of this crime. According to the Chamber, the information referred to a group of people, which prevented the individual participants from being singled out.⁸⁴

60. On December 11, 2002, the Fourth Criminal Judge of Tungurahua issued a provisional stay of proceedings, considering that there was no record that the accused parties had been summoned to the evidentiary proceedings during the investigative stage, and also, that there was no evidence to support the "presumption of the existence of the crime" during the investigation stage, therefore no responsibility could be established.⁸⁵

61. On October 15, 2004, the police chief reported that the investigation was "continu[ing] in this case, with the aim of finding the whereabouts of the missing citizen and [that] the results of the investigation would be ma[de] known to the competent authorities."⁸⁶ On October 18, the Fourth Criminal Court of Tungurahua certified that, starting from the provisional stay of proceedings issued on December 11, 2002, "no other action has been received from the Prosecutor's Office, up to the present date."⁸⁷

62. More than 13 years later, on April 27, 2018, the Prosecutor General's Office opened an investigation "into the alleged crime of forced disappearance of persons committed against Fredy Núñez Naranjo"⁸⁸ in the context of which several procedures have been carried out.⁸⁹

⁸² Cf. Official letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Fiscal Minister of Tungurahua on June 30, 2002 (case file of evidence, pages 39 and 40).

⁸³ Cf. Habeas corpus petition filed before the Tungurahua Superior Court of Justice on July 11, 2002 (case file of evidence, pages 59 to 67).

⁸⁴ Cf. Resolution of the Second Chamber of the Superior Court of Justice of Tungurahua of July 31, 2002 (case file of evidence, pages 75 to 81).

⁸⁵ Cf. Provisional stay of proceedings order of the Fourth Criminal Court of Tungurahua of December 11, 2002 (case file of evidence, page 48).

⁸⁶ Cf. Official Letter No. 3585-CP9-2004 from the Chief of the Judicial Police of Tungurahua of October 15, 2004 (case file of evidence, page 86).

⁸⁷ Cf. Certification of the Fourth Criminal Court of Tungurahua Substitute on October 18, 2004 (case file of evidence, page 229).

⁸⁸ It is processed under Preliminary Investigation No. 180101820060458. Cf. Prosecutor General's Office Official Letter No. FGE-CGAJP-DDHPC-2023-000903-O, January 31, 2023 (case file of evidence, page 1662).

⁸⁹ Among which stand out: i) a report from the "Pastaza Criminal Support Unit [...according to which] they do not have information on findings of unidentified bodies NN on the banks of the Pastaza River in 2001 and 2002, as there is no

Furthermore, on an undetermined later date, the Prosecutor General's Office opened an investigation for "the alleged crime of torture committed against María Gregoria Naranjo and Marcia Lorena Núñez Naranjo."⁹⁰ The State reported that, in the course of these inquiries, some procedures⁹¹ have been conducted and that the two cases are in the "preliminary investigation" stage.⁹²

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63. In the instant case, the Court must analyze the international responsibility of the State to the detriment of Fredy Núñez Naranjo and his family, arising from his alleged forced disappearance as of July 15, 2001. Furthermore, it is up to this Court to examine Ecuador's international responsibility for the alleged failure to investigate and punish those responsible for the physical

physical or digital information"; ii) "[the] response from the Public Works Dep[artment] of the Municipality of the Quero Canton, indicating that in th[e] works carried out in the communities of Shaushi and Puñachisag, they have not found any type of Human Remains from the years 2001 to the present"; iii) [t]he inclusion of "the [f]amily of Mr. Fredy Marcelo Núñez Naranjo [... in] the Victim and Witness Protection system"; iv) the request for information "to the Napo Forensic Department [to] report if during the years 2001 and 2002 they have found unidentified bodies NN on the banks of the Napo River"; v) the reception of "the statements of two of the main suspects, former high-ranking leaders of the Quero Peasant Boards, AV and FAJL, [who ...] have invoked the constitutional [r]ight to [s]ilence"; vi) the "pro[vision of] a [forensic anthropological] expertise, of some remains found in a Community of Chilco la Esperanza of the Tisaleo canton, neighboring canton of Quero Canton, [to analyze] if these remains have some characteristics or indications with those of the missing person to then do a DNA with the sampl[e]s of the relatives of the alleged missing person"; vii) the "pro[vision of] a study and analysis of DNA genetic profiles with samples provided by the [...] mother of the missing person[; ...] same [...] that has been compared with genetic profiles stored in the database of corpses, bone remains and remains of missing persons that exist in the Genetics Laboratory of the National Service of Legal Medicine and Forensic Sciences [... from which it was concluded that] there is no relationship or compatibility between [...] the DNA sample of the mother of the missing person with any of the DNA samples that are stored in [...] the laboratory"; viii) and the "coordination with the relatives of the [alleged missing person ...] to provide a [p]hoto [...] to coordinate [...] with the DINASED and once again request that they collaborate in the search, location, and recovery by all possible means, and conducting a search in all possible places and institutions to obtain some results about the location of the [alleged] missing person and his whereabouts." Cf. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, pages 1556 and 1557); Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, pages 1559 to 1561), and Report No. FGE-DNSPAVT-2023-021 from the Prosecutor General's Office of February 2, 2023 (case file of evidence, pages 1793 to 1827). Likewise, the Prosecutor's Office detailed other "extended prosecutorial actions in the investigation No. 180101820060458 for an alleged crime of forced disappearance." Cf. Official Letter No. FGECGJJP-DDHPC-2023-000903-O from the Prosecutor General's Office of January 31, 2023 (case file of evidence, pages 1663 to 1675).

⁹⁰ It is processed under Preliminary Investigation No. 180101820060459. Cf. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, page 1556) and Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, page 1560).

⁹¹ Such as: i) the "notifica[tion] as suspects to five community members from the Quero Canton, who have already appeared"; ii) the execution of "an *on site* visit to the place where presumably they would have been [...] without any punishment location having been identified"; iii) "[t]he compila[tion and incorporation into the] fiscal case file the Judicial Process N° 18252-2005-0383, in certified copies, due to the kidnapping of Mr. Fredy Marcelo Núñez Naranjo, was followed against several community members from Quero Canton, in this case leading to a provisional stay of proceedings by the Fourth Criminal Court of Ambato at that time," and iv) the legal medical assessment of the alleged victims in order to verify any physical sequelae that may have remained as a result of the alleged tortures they would have been subjected to, to which Mrs. Marcia Lorena Núñez Naranjo has not agreed due to the number of years that have passed and Mrs. María Gregoria Naranjo agreed, to which results were obtained indicating no external physical injuries due to the time that had elapsed. Cf. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, pages 1556 and 1557) and Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, pages 1559 to 1561). Likewise, the Prosecutor's Office detailed other "extended prosecutorial actions in the investigation No. 180101820060459 for an alleged crime of torture." Cf. Official Letter No. FGECGJJP-DDHPC-2023-000903-O issued by the Prosecutor General's Office on January 31, 2023 (case file of evidence, pages 1676 to 1689).

⁹² Cf. Answering brief from the State, pages 38 and 57 (case file on the merits, pages 191 and 210).

injuries suffered on that same date by María Gregoria Naranjo and Marcia Núñez Naranjo, mother and sister of Fredy Núñez Naranjo.

64. The alleged violations of the rights to a fair trial and to judicial protection resulting from the insufficiency of state actions aimed at investigating what happened to Fredy Núñez Naranjo and punishing those responsible will not be examined in this section as they have been acknowledged by the State (*supra* paras. 25 and 31).

65. The Court will now address, based on the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons, and taking into consideration, where relevant, the partial acknowledgement of responsibility made by the State (*supra* paras. 25 and 31), the alleged violations of: a) the rights to juridical personality, to life, to humane treatment, and to personal liberty, as well as the obligations not to practice, not to allow, nor to tolerate forced disappearance, to the detriment of Fredy Núñez Naranjo; b) the obligations to search for the presumed victim and to punish those responsible for the forced disappearance of persons, to the detriment of Fredy Núñez Naranjo and his relatives, as well as the right to truth, based on the principle *iura novit curia*, to the detriment of the relatives of Fredy Núñez Naranjo; c) the right to humane treatment, to the detriment of the relatives of Fredy Núñez Naranjo; d) the rights to a fair trial and to judicial protection, to the detriment of María Gregoria Naranjo and Marcia Núñez Naranjo.

VII.1

RIGHTS TO JURIDICAL PERSONALITY,⁹³ TO LIFE,⁹⁴ TO HUMANE TREATMENT,⁹⁵ TO PERSONAL LIBERTY,⁹⁶ AND OBLIGATION NOT TO PRACTICE, PERMIT, OR TOLERATE THE FORCED DISAPPEARANCE OF PERSONS⁹⁷

A. Arguments of the Commission and the parties

66. The **Commission** affirmed that Fredy Núñez Naranjo was a victim of forced disappearance, as the elements characteristic of this violation established in the Court's case law are present. Firstly, the Commission considered that the deprivation of liberty is proven since the Police arrested the alleged victim on July 15, 2001 and, on that same date, he was taken out of the jail where he was located and led to the community of Puñachizag and then to the community of Shaushi, after which his whereabouts have been unknown. Secondly, regarding the direct intervention of state agents or their authorization, support, or acquiescence, the Commission emphasized that there is no dispute that the kidnapping was carried out by the Peasant Defense Boards and argued that these "ac[t]ed" with the acquiescence of the State."

67. Regarding this last aspect, in its final written observations, the Commission stated that "at no time during the proceedings before the inter-American system[,] the [Commission] has compared the actions of the Peasant Defense Boards with paramilitary groups "nor has it endeavored to establish a historical context of disappearances perpetrated by the mentioned group at the time of the events. However, the Commission emphasized that, according to the evidence, "some of the individuals involved in the victim's abduction, transfer to the community, and subsequent disappearance and concealment are members of the Peasant Boards."

⁹³ Cf. Article 3 of the American Convention in relation to Article 1(1) of the same instrument.

⁹⁴ Cf. Article 4 of the American Convention in relation to Article 1(1) of the same instrument.

⁹⁵ Cf. Article 5 of the American Convention in relation to Article 1(1) of the same instrument.

⁹⁶ Cf. Articles 7 of the American Convention in relation to Article 1(1) of the same instrument.

⁹⁷ Cf. Article I(a) of the Inter-American Convention on Forced Disappearance of Persons.

68. Thirdly, the Commission stated that the refusal to acknowledge the detention or to reveal the fate or whereabouts of the disappeared person came about because the lack of diligent action by the State made it possible to conceal the whereabouts of the alleged victim. Furthermore, the criminal proceeding was not aimed at determining the whereabouts of the alleged victim, but rather, it contributed to perpetuating the violation.

69. In its final written observations, the Commission emphasized that, as expert Galvis Patiño established during the hearing, acquiescence corresponds to the lowest degree of state participation in the international offense and that, in this case, it was apparently demonstrated through multiple indications. Thus, the Commission emphasized that no detailed information was provided by the State regarding the manner in which the communities entered the police station, nor on how the police officers tried to prevent the victim's kidnapping, especially considering that, given the number of individuals involved, the State would have been aware that they were approaching. It was also emphasized that it was not proven that the individuals who gained access to the police station were armed or that the agents had requested reinforcements. The Commission added that, despite the fact that, in the hearing, the State claimed to have acted diligently because, after the kidnapping, police reports were issued on the same day, such actions do not account for immediate search efforts.

70. Similarly, the Commission pointed out that acquiescence is proven given that the investigation was extremely deficient. In the Commission's view, the situation of impunity more than 20 years after the disappearance of Mr. Núñez Naranjo, coupled with the State's partial acknowledgement of responsibility for violating the rights to a fair trial and judicial protection, constitutes another element that suggests the State's acquiescence to the forced disappearance, as the Court held in the Case of *Isaza Uribe et al. v. Colombia*.⁹⁸

71. In their final written arguments, the **representative** asserted that the State violated Articles 5 and 7 of the Convention. Furthermore, they opposed the classification of force majeure used by the State regarding the circumstances under which Fredy Núñez Naranjo was kidnapped from the police station.

72. The **State** opposed the characterization of forced disappearance as alleged by the Commission. On this matter, the Commission indicated that, when they stormed the police station, the members of the Puñachizag community acted in a surprising and threatening manner against public premises, which led to the initiation of criminal proceedings against several individuals. The Commission argued that such actions were neither tolerated nor acquiesced to by the State.

73. In the framework of its final oral and written arguments, the State insisted that, in this case, a criminal offense occurred whose responsible parties are individuals belonging to the Puñachizag and Shaushi communities and emphasized that there is no evidence that they were linked to the Peasant Defense Boards.

74. In this regard, in the State's final written arguments, it asserted that, at most, the State would be responsible for "a potential obligation of medium-level custody, taking into account the context of force majeure and unpredictability of the act, and due to the notable numerical superiority of the presence of the Shaushi and Puñachizag community members who violently extracted Mr. Núñez Naranjo from the police station."

⁹⁸ Cf. I/A Court H.R. *Case of Isaza Uribe et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 20, 2018. Series C No. 363, para. 143.

75. At the same opportunity, the Commission argued that, in cases previously adjudicated by the Court, as well as in the case law of the European Court of Human Rights and in the rulings of the United Nations Committees, the existence of a conducive or favorable context for forced disappearance is a central element in establishing the responsibility of the State. However, in this case, such context does not exist. Likewise, it argued that it occurred in a situation of force majeure since the police officers "lacked the physical and technical capacity to prevent and/or avoid the kidnapping [...] making it impossible to comply with the State's obligation to provide guarantees."

76. In addition, the State individually referred to the violations included in the Merits Report. The Commission pointed out that there was no violation of the right to juridical personality because "the rights of Mr. Fredy Núñez Naranjo were not suspended, his right to name, identity, and nationality was not restricted." On the contrary, he argued, "several procedures [of investigation and search] have been recorded with strict adherence to the identity of Mr. Fredy Núñez Naranjo."

77. It was concluded that there are no concrete indications that would suggest that Mr. Fredy Núñez's life was deprived of by the actions or acquiescence of state agents, nor has it been proven that the Peasant Defense Boards violated Fredy Núñez Naranjo's right to life.

78. The Commission also stated that there was no violation of the right to personal liberty because Mr. Núñez Naranjo's arrest by the police was legal and not arbitrary; the alleged victim knew the reasons for the arrest, was placed under the jurisdiction of the competent authority, and could also appeal the arrest.

79. Likewise, it opposed the alleged violation of the right to humane treatment as it considered that there was no forced disappearance, and it was not reported that the alleged victim had been subjected to prolonged isolation or lack of communication by the state agents who were guarding him.

B. Considerations of the Court

80. This Court will now proceed to: 1) make general considerations about forced disappearance and the evidentiary guidelines that must be considered in relation to this violation of human rights; 2) evaluate the existing evidence in the case of the alleged forced disappearance of Fredy Núñez Naranjo, and 3) present its conclusions regarding the violations analyzed in this section.

B.1 General considerations on forced disappearance and evidence

81. In its case law, the Court has repeatedly established that forced disappearance is a complex and multiple violation, which places the victim in a state of complete defenselessness⁹⁹ and infringes various legal rights protected under the American Convention. In particular, this behavior results in the violation of the rights to juridical personality, to life, to personal integrity, and to personal liberty, set out in Articles 3, 4, 5, and 7 of the Convention, respectively.¹⁰⁰ Furthermore, the Court has stated that, if a State practices, permits, or tolerates an act of forced disappearance, it fails to fulfill the obligations set forth in Article I(a) of the Inter-American Convention on Forced

⁹⁹ Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 59, and *Case of Movilla Galarcio et al. v. Colombia. Merits, Reparations, and Costs*. Judgment of June 22, 2022. Series C No. 452, para. 120.

¹⁰⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 150, 155-158, 186 and 187, and *Case of Flores Bedregal et al. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 17, 2022. Series C No. 467, para. 87.

Disappearance of Persons, which prohibits such behaviors.¹⁰¹

82. The Court warns that, according to its case law, given the multiple and complex nature of this grave violation of human rights, a forced disappearance may include a specific violation of Article 3 of the Convention¹⁰² because the consequence of the refusal to recognize the deprivation of liberty or whereabouts of the person, together with the other elements of the disappearance, amounted to "deprivation of the protection of law" or a violation of personal and legal certainty, directly obstructing the right to juridical personality.¹⁰³ Despite the fact that the disappeared person can no longer exercise and enjoy other rights, and eventually all the rights to which he or she is entitled, his or her disappearance is not only one of the most serious forms of placing the person outside the protection of the law but it also entails to deny that person's existence and to place him or her in a kind of limbo or uncertain legal situation before the society and the State.¹⁰⁴

83. Furthermore, the Court has affirmed that forced disappearance is "a continuing or permanent act that extends until the whereabouts of the victims are known or until their remains have been found and clearly identified."¹⁰⁵ This fact is determined when it includes the following concurring elements: a) the deprivation of liberty; b) the direct intervention of State agents or their authorization, support or acquiescence; and, c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person concerned.

84. Looking into the evidence provided of these elements, the Court has emphasized that, since forced disappearance is characterized by an attempt to suppress all information about the kidnapping, whereabouts and fate of the victims. This characteristic may result in the difficulty or impossibility of obtaining direct evidence concerning the act of forced disappearance.¹⁰⁶ However, "[t]his [...] does not, of itself, prevent the Court from determining, if applicable, the responsibility of the State."¹⁰⁷ In such context, the fact that domestic investigations have not controverted the evidence of the State's participation in the events is a pertinent element that gives weight to the evidence.¹⁰⁸

85. On this matter, it should be borne in mind that the Court, in order to establish a State's responsibility, does not need to establish the material attribution of an act to the State beyond any reasonable doubt, but rather be convinced that conduct attributable to the State that entails the breach of an international obligation and impacts human rights has been verified.¹⁰⁹ To this

¹⁰¹ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 154, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 87.

¹⁰² "Article 3. Right to Juridical Personality. Every person has the right to recognition as a person before the law."

¹⁰³ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 90 to 92, and *Case of the Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 23, 2021. Series C No. 437, para. 138.

¹⁰⁴ Cf. *Case of Anzualdo Castro v. Peru, supra*, para. 90 and 91, and *Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 15, 2017. Series C No. 332, para. 137.

¹⁰⁵ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, paras. 155 to 157 and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 119. In the same sense, Article III of the IACFPD indicates that the "crime" of forced disappearance of individuals "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined." Cf. Article III of the Inter-American Convention on Forced Disappearance of Persons.

¹⁰⁶ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 131 and *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 27, 2022. Series C No. 455, para. 366.

¹⁰⁷ Cf. *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 121.

¹⁰⁸ Cf. *Case of Kawas Fernández v. Honduras. Merits, Reparations, and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 96, and *Case of Movilla Galarcio et al. v. Colombia, supra*, note 146.

¹⁰⁹ Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, paras. 128 to 135 and 173, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 122.

end, the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.¹¹⁰ Moreover, given the nature of forced disappearance, which is committed with the intention of concealing what has occurred, circumstantial evidence, *indicia*, and presumptions of the commission of a crime are especially important, inasmuch as, taken as a whole, they make it possible to draw conclusions consistent with the facts.¹¹¹

86. This Court has also held that, in some cases, the analysis of forced disappearance based on the three elements mentioned may be insufficient or unnecessary. This happens, for example, when the disappearance affects individuals over whom the State has a special position of guarantor, such as that held with respect to individuals deprived of their liberty.¹¹² Thus, in the case of *Isaza Uribe et al. v. Colombia*, the Court considered that, just as it happens when the State does not provide a satisfactory explanation about the injuries suffered by a person deprived of his or her liberty, the State's responsibility can also be presumed when the person disappears while under its custody without it disproving the allegations about state responsibility.¹¹³ Such conclusion arises as a corollary of the State's objective responsibility regarding the life, integrity, and safety of the individuals under its custody.¹¹⁴ In such circumstances, regardless of the individual responsibilities that the authorities may need to determine within their respective scopes of authority, it is possible that forms of forced disappearance may occur due to the omission of state agents who were supposed to ensure the guarantee of rights, regardless of whether there is also evidence of direct participation or other forms of acquiescence.¹¹⁵

87. As such, when there is suspicion that a person has been subjected to forced disappearance, the State has the obligation to provide an immediate, satisfactory, and convincing explanation of what happened to a person who was under State custody,¹¹⁶ which is naturally linked to the State's obligation to conduct a serious and diligent investigation into the matter.¹¹⁷ For this reason, this Court's case law has considered that the State's failure to clarify the facts is a sufficient and reasonable element to lend weight to the evidence and belief that a forced disappearance was

¹¹⁰ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 135, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 122.

¹¹¹ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, paras. 130 and 131, and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 271.

¹¹² Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 92.

¹¹³ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 88 to 95.

¹¹⁴ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 89.

¹¹⁵ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 92.

¹¹⁶ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 93. See, *mutatis mutandi*: *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 111; *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of February 29, 2016. Series C No. 312, para. 257; *Case of Munárriz Escobar et al. v. Peru. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 20, 2018. Series C No. 355, para. 73, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations, and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 163.

¹¹⁷ Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 65, and *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 93. Likewise, see Article 12(2) of the International Convention for the Protection of All Persons from Enforced Disappearance and 13 of the Declaration on the Protection of all Persons from Enforced Disappearance. In addition, the Vienna Declaration and Programme of Action approved by the World Conference on Human Rights on June 25, 1993, established that: "it is the obligation of all States, in any circumstances, to undertake an investigation whenever there are grounds to believe that a forced disappearance has occurred in a territory subject to their jurisdiction and, if the arguments are confirmed, to prosecute the perpetrators of the act" (para. 62). Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, note 99.

perpetrated¹¹⁸ or to conclude the configuration of this when the person was under state custody.¹¹⁹

B.2 Evaluation of the circumstances of the disappearance of Fredy Núñez Naranjo

88. The central dispute in the case is to determine whether a forced disappearance attributable to the State of Ecuador occurred. In this regard, the Court emphasizes that it is an undisputed fact that Fredy Núñez Naranjo was arrested by police officers and confined in a station under state control on July 15, 2001 (*supra* para. 42). Once in that place, he was kidnapped by inhabitants of the Puñachizag and Shaushi communities (*supra* para. 43), who included members of the Peasant Defense Boards of the Quero canton.¹²⁰ After the kidnapping, Fredy Núñez Naranjo was taken to the communities, and ever since then, his whereabouts have been unknown (*supra* par. 45).

89. The State argued that the circumstances in which the kidnapping of Fredy Núñez Naranjo occurred constitute force majeure, as the sudden appearance of approximately 400 individuals in front of the police station made it impossible to resist the kidnapping of the alleged victim. In this regard, it stated that the police officers "lacked the physical and technical capacity to prevent and/or avoid the kidnapping [...] making it impossible to comply with the State's obligation to guarantee" (*supra* para. 75).

90. The Court emphasizes that, due to its exceptional nature, force majeure¹²¹ places the burden on the party alleging it to prove the unforeseen, irresistible, and uncontrollable nature of the circumstances that qualify as constituting force majeure.¹²² Likewise, the acknowledgment of force majeure requires proving that these circumstances made it impossible to comply with the obligations of the party claiming such force majeure.¹²³ In this case, the Court finds that the State's explanation of the events does not meet the previously indicated burdens to prove that force majeure was established, for the reasons that will be explained.

¹¹⁸ Cf. *Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 27, 2012. Series C No. 240, paras. 169 and 170, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 134.

¹¹⁹ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 93.

¹²⁰ According to this organization "[AV], [RBV], [BT], [LASBC], [FAJL], [EACV], [MUBS] [...] ar[e] innocent individuals of the [f]act [...] that they [a]re accused of, the only criminal offense they commi[t] is to live from [their] work and somehow fi[gh]t the offender." Cf. Official letter from the Central Board of Peasants No. 88-CJDCQ-2002 addressed to the Fiscal Minister of Tungurahua on June 30, 2002 (case file of evidence, page 39).

¹²¹ The Court points out that, in terms of the customary rules on the international responsibility of the State formulated by the United Nations International Law Commission, force majeure is a cause for excluding unlawfulness that is not applicable to the "act of a State that is not in conformity with an obligation arising from a mandatory rule of general international law." Cf. United Nations International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, Article 26. Available at: https://legal.un.org/ilc/publications/yearbooks/spanish/ilc_2001_v2_p2.pdf. This Court has recognized that, given the particular severity of forced disappearance and the nature of the violated rights, and considering that it implies a gross abandonment of the essential principles on which the Inter-American Human Rights System is based, its prohibition and the corresponding duty to investigate and punish those responsible have reached the character of *ius cogens*. Cf. *Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 84 and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 78.

¹²² As established by the customary rules on international responsibility formulated by the United Nations International Law Commission, force majeure operates when there is "an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation"; the above, provided that, the situation is not due, solely or in combination with other factors, to the behavior of the State invoking it; or it has not assumed the risk of such a situation occurring. Cf. United Nations International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, Article 23, pages. 80 to 83. Available at: https://legal.un.org/ilc/publications/yearbooks/spanish/ilc_2001_v2_p2.pdf.

¹²³ Cf. United Nations International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts *supra*.

91. First, the unexpected nature of the appearance of a significant number of individuals in front of the police station has not been proven, as it is not logical that the gathering and subsequent movement towards the police station of a crowd of the dimensions claimed by the State would go unnoticed by state authorities. Secondly, the State did not clearly explain how the kidnapping occurred. It was not specified how many individuals got into the police station, how they did it, nor how they proceeded to release two community members and detain Fredy Núñez Naranjo. It has not been proven that these individuals were armed, -though it can be assumed that the officers were¹²⁴-, that they attacked or threatened the police officers in order for them to release the detainees, nor whether it was the community members themselves who removed such persons from the cell(s). On this point, the Court is struck by the oddly identical and excessively succinct nature of the phrases used in the reports and police statements that only refer to the number of community members and the fact that they breached the police station security, although it is not indicated exactly how that was done.¹²⁵

92. In third place, the State of Ecuador did not provide evidence of any action by state agents aimed at protecting individuals who were deprived of their liberty, under their responsibility and custody. In fact, the police reports do not even mention that the doors of the police station had been closed upon the arrival of the community members or the reasons why this would not have been possible, nor do they refer to whether there was any type of contact or communication between police officers and community members; nor do they mention the behavior displayed by the police officers and the commissioner present at the police station at the time of the incursion by the community members.¹²⁶ There is no evidence that they called for reinforcements or carried out any kind of action that, ultimately, proved futile or unsuccessful against the determination and number of the community members. It is also not stated that they pursued, requested reinforcements, blocked roads, or attempted to immediately locate Mr. Núñez Naranjo, considering that the mobilization of 400 individuals just 3 kilometers away was easy to track, and that it would have been straightforward to determine the direction in which they were moving. It was the State's responsibility to provide evidence of the indicated facts not only because it was the party claiming force majeure, but also because this information should have been provided by its own agents.

93. Given the above, since it was not proven that the kidnapping of Fredy Núñez from the Quero Canton police station occurred under circumstances that were irresistible, unforeseen, and beyond the control of the State (*supra* para. 90), the Court understands that no alleged force majeure by the State was established.

94. Nevertheless, the Court notes that, although the Inter-American Convention on Forced Disappearance of Persons, as well as other important international instruments on the matter¹²⁷

¹²⁴ In their final allegation briefs, the State noted that "the police officers were equipped with revolver-type weapons and had a motorcycle for their mobilization."

¹²⁵ Cf. Police Report addressed to the Provincial Chief of the Tungurahua Police Command on July 15, 2001 at 17:30 hours (case file of evidence, page 1656); Police Report addressed to the Provincial Police Commander of Tungurahua on July 15, 2001 at 19:00 hours (case file of evidence, page 1660); Testimonial statements of MV and LPV given on August 15, 2001 (case file of evidence, pages 37 and 322) and Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 16).

¹²⁶ Cf. Police Report addressed to the Provincial Chief of the Tungurahua Police Command on July 15, 2001 at 17:30 hours (case file of evidence, page 1656); Police Report addressed to the Provincial Police Commander of Tungurahua on July 15, 2001 at 19:00 hours (case file of evidence, page 1660) and Police Report addressed to the Provincial Police Commander of Tungurahua on July 18, 2001 at 12:00 hours (case file of evidence, page 179).

¹²⁷ Cf. UN. International Convention for the Protection of All Persons from Forced Disappearance, adopted by the United Nations General Assembly on December 20, 2006. See also United Nations Economic and Social Council, Report of the Working Group on Forced or Involuntary Disappearance of Persons, General Comment on Article 4 of the Declaration on the Protection of All Persons from Forced Disappearances of January 15, 1996 (E/CN. 4/1996/38), para. 55.

and the case law of this Court itself, have pronounced on the most serious forms of forced disappearance, these sources should not be understood as covering all possible modalities of this serious human rights violation or as excluding others not set out in them. Therefore, in some cases, the analysis of the disappearance based solely on the three elements mentioned may be insufficient or unnecessary (*supra* para. 86).

95. In this regard, as established in the *Case of Isaza Uribe et al. v. Colombia* in this case, the Court notes that the alleged forced disappearance occurred while the presumed victim was deprived of their liberty in a state establishment.¹²⁸ As stated on that occasion, it is pertinent to remember that the State of Ecuador was in a special position as a guarantor of Fredy Núñez Naranjo. Such position is derived, on one hand, from the fact that prison authorities exercise heavy control or command over the persons in their custody¹²⁹; and, on the other hand, by the particular rigor with which the State is able to regulate their rights and obligations and owing to the circumstances inherent in internment.¹³⁰ As a result of the aforementioned guarantor position, the State had a particular duty of custody towards Fredy Núñez Naranjo precisely because he was under the surveillance and care of the police station agents.

96. The Court highlights that, from the moment the community members presented themselves at the police station, state agents were aware of their place from which they had come.¹³¹ As previously indicated, despite the proximity between said place and the station (three kilometers away), the police officers did not turn to or request that another authority assist these communities in order to recover Fredy Núñez Naranjo (*supra* para. 92). In fact, even though the second police report comes from a lieutenant who was leading about twenty agents and the report was addressed to the province police commander, just a few hours before the transfer of Fredy Núñez Naranjo to the Puñachizag community (*supra* para. 47), there is no evidence that the group of police officers present or the provincial police took any effort to rescue the alleged victim.

97. This Court recalls that, according to its case law, the State's failure to clarify the facts is a sufficient and reasonable element to lend weight to the evidence and belief that a forced disappearance was perpetrated, or to conclude that such even had happened when the person was under state custody (*supra* para. 87). Precisely for this reason, the State's defense cannot rest on the lack of evidence when it is the State itself that has control over the means to clarify the facts (*supra* para. 85).

98. Taking the above into account, the Court finds that the State failed to fulfill the duty of custody that corresponded to it due to its position as guarantor of Fredy Núñez Naranjo. For this reason, by virtue of the reasons stated, this Court considers that in this case a forced disappearance was committed, attributable to the State of Ecuador.

B.3 Conclusions about the alleged violations

99. In accordance with the Court's case law, the forced disappearance of Fredy Núñez Naranjo implies the violation of his rights to juridical personality (Article 3), to life (Article 4(1)), to humane

¹²⁸ Cf. *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 85.

¹²⁹ Cf. *Case of Neira Alegría et al. v. Peru. Merits*. Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 18, 2020. Series C No. 417, para. 88.

¹³⁰ Cf. *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 2, 2004. Series C No. 112, para. 152, and *Case of Mota Abarullo et al. v. Venezuela*, *supra*, para. 88.

¹³¹ Cf. Police reports issued on July 15, 2001 at 5:30 PM and at 7:00 PM (case file of evidence, pages 1656 and 1660).

treatment (Articles 5(1) and 5(2)), and to personal liberty (Article 7(1)), in relation to Article 1(1) of the American Convention.

100. Likewise, the State's behavior constitutes a violation of the obligation not to practice, permit, or tolerate the forced disappearance of persons, as provided for in Article I (a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Fredy Núñez Naranjo.

VII.2

RIGHT TO THE TRUTH AND IMMEDIATE SEARCH OBLIGATIONS FOR THE DISAPPEARED PERSON¹³² AND INVESTIGATION, PROSECUTION, AND PUNISHMENT OF THOSE WHO COMMIT THE CRIME OF FORCED DISAPPEARANCE OF PERSONS¹³³

A. Arguments of the Commission and the parties

101. The *Commission* considered that an immediate search and investigation was not activated to locate the alleged victim, despite the fact that, given the indications that it could be a case of forced disappearance, there should have been a swift and thorough response in the first hours after becoming aware of the situation. In this regard, the Commission stated that: (i) there is no record of "any immediate search efforts conducted in the first few days after the incident to locate the alleged victim"¹³⁴; (ii) "the acknowledgment of the jail from which the alleged victim was extracted took place nine months after the events, so no material damage was found nor could the use of force at the time he was removed from the jail be determined"; (iii) "there is no record that the State conducted an inspection in the cells where Fredy Núñez Naranjo could have been held, despite the Central Board reporting that the alleged victim was taken to a cell in the Puñachizag Community, but that, he escaped from it by force"; (iv) "there is no record that due to this fact, the Boards members were subjected to a criminal proceeding, even though they explicitly acknowledged having taken Mr. Núñez and having detained him in a cell"; (v) "the evidence obtained during the investigative stage did not comply with the Organic Law of the Public Prosecutor," which resulted in a "provisional stay of proceedings," which "prevented the consideration of the evidence [obtained]"; (vi) no measure was ordered "to rectify the mentioned omissions and restart the process"; (vii) "in the prosecutor's investigation stage [of such process], no evidence was incorporated," and (viii) that "on October 18, 2004, the Fourth Criminal Court reported that since the decision of provisional stay of proceedings, no procedure has been received from the prosecution," which shows that "no avenue was activated to reverse the decision of a provisional stay of proceedings."

102. The Commission added that, as identified by expert Galvis Patiño, "the investigation and search process were not carried out in accordance with international standards in the field." Additionally, "[f]or 16 years there was no type of procedural action and [it was] only in 2018, when the case was already before the C[ommission ...], that the investigation was reopened and is currently in the preliminary inquiry stage." This has involved an "unreasonable delay" as well as a "lack of information on the current status of the search plan for Mr. Núñez Naranjo's whereabouts." The Commission pointed out that the investigation "has been extremely deficient and has generated a situation of total impunity with no one prosecuted or convicted to date, after

¹³² Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of the same instrument.

¹³³ Article I (b) of the Inter-American Convention on Forced Disappearance of Persons.

¹³⁴ He pointed out that, although police reports were issued that same day, these "should not necessarily be considered a search procedure"; also, that in the police reports of August and October 2001, it is not recorded what "specific procedures were carried out, beyond taking statements."

more than twenty years since the disappearance of Mr. Núñez, added to the acknowledgment of partial state responsibility for the violation of rights to a fair trial and to judicial protection."

103. By virtue of the foregoing, it concluded that Ecuador violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, as well as Article I(b) of the IACFDP, to the detriment of Fredy Núñez Naranjo and his family members.

104. The **representative** did not expressly refer to the alleged violations discussed in this section.

105. Regarding the alleged violation of the immediate search obligation, the **State** noted that, at the time when Sixto Núñez filed the complaint, the State "was already investigating the whereabouts of Mr. Fredy Núñez." On the other hand, the State did not provide specific arguments aimed at disproving the violation of Article I (b) of the IACFDP even though, in its final allegations, it withdrew the preliminary exception *ratione temporis* raised in the answering brief regarding such violation.

B. Considerations of the Court

106. States have a legal duty to take reasonable steps to prevent human rights violations and to use the means at their disposal to carry out a serious investigation of violations committed within their jurisdictions, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.¹³⁵ In particular, when it comes to investigating violations against individuals who were under state custody, the relevant authorities have the duty to initiate, *ex officio* and without delay, a serious, independent, impartial, and effective investigation, that is, with due diligence, substantiated by all available legal means and aimed at determining the truth.¹³⁶ Such characteristics of the duty to investigate are even more applicable in cases of potential forced disappearance of a person.¹³⁷

107. In response to this particular violation, in addition to the duty of due diligence and the duty to punish those responsible, the Court has emphasized the existence of an autonomous obligation to search for and locate the disappeared persons who have been subject to forced disappearance, derived from Articles 8(1) and 25(1) of the American Convention, Article X of the IACFDP, and the International Convention on Forced Disappearance of Persons.¹³⁸ This duty has also been expanded upon by the United Nations Committee on Enforced Disappearances¹³⁹ and by the

¹³⁵ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 174, and *Case Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 264.

¹³⁶ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 177, and *Case of Isaza Uribe et al. v. Colombia*, *supra*, para. 150.

¹³⁷ Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 80, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations, and Costs*. Judgment of September 1, 2021. Series C No. 434, para. 69.

¹³⁸ Cf. *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 75, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 121. In that sense, the International Convention for the Protection of All Persons from Enforced Disappearance adopted by the United Nations General Assembly on December 20, 2006, in its Articles 15, 19(1), 24(2), 24(3), 25(2) and 25(3), refers to the obligation to search for and locate disappeared persons in a precise and differentiated manner with respect to criminal investigation.

¹³⁹ Cf. Committee on Enforced Disappearance, Final observations on the report presented by Spain under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/ESP/CO/1, December 12, 2013, para. Article 32, Committee on Enforced Disappearances, Final observations on the report presented by Burkina Faso under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/BFA/CO/1, May 24, 2016, para. 40; Committee on Enforced Disappearances, Final observations on the report presented by Honduras under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/HND/CO/1, of May 25, 2018, para. 30.f., and Committee on Enforced Disappearance, Final observations on the report presented by Chile under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/CHL/CO/1, April 18, 2019, para. 27.a.

Guiding Principles for the Search for Disappeared Persons. They indicate that the responsible authorities should initiate the search independently, even when no formal complaint or request has been made,¹⁴⁰ adding that "[t]he search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing," and "[t]he comprehensive search process for disappeared persons should be initiated and conducted with the same effectiveness as the criminal investigation."¹⁴¹

108. The fulfillment of this obligation affects the rights of both the disappeared person and their relatives.¹⁴² In response to these, the obligation to search corresponds to the fair expectation of finding the disappeared person or, if applicable, finding their remains so that their identity can be definitively determined.¹⁴³

109. In this regard, in accordance with this Court's case law, when a person's disappearance has been reported, regardless of whether it has been committed by individuals or by state agents, the immediate and diligent state response largely depends on the protection of the life and integrity of the reported disappeared person. Therefore, whenever there is a reason to believe that a person has been subjected to forced disappearance, the prompt and immediate action of prosecution and judicial authorities is essential, by the order of timely and necessary measures addressed to determine the whereabouts of the victim or the place where he or she could be found deprived of freedom.¹⁴⁴

110. Furthermore, the Court has noted that the right to know the whereabouts of disappeared victims is an essential component of the right to know the truth¹⁴⁵ and has highlighted the importance of this right, insomuch as satisfaction of this right is in the interest not only of the relatives of the victims of forced disappearance, but also of society as a whole, as it facilitates the prevention of this type of violation in the future.¹⁴⁶ Although the right to know the truth has basically been considered part of the right of access to justice, its nature is broad and, therefore, its violation may impair different rights contained in the American Convention, depending on the particular context and circumstances,¹⁴⁷ as is the case with the rights to a fair trial and to judicial protection, recognized by Articles 8 and 25 of the treaty,¹⁴⁸ or the right of access to information,

¹⁴⁰ Cf. Committee on Forced Disappearances. Guiding Principles for the Search for Disappeared Persons, UN Doc. CED/C/7. Principle 6.

¹⁴¹ Cf. Committee on Forced Disappearances. Guiding Principles for the Search for Disappeared Persons. UN Doc. CED/C/7. Principle 13.

¹⁴² Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 124, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, paras. 120 and 121.

¹⁴³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 245, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 184.

¹⁴⁴ Cf. *Case of Anzualdo Castro v. Peru*, *supra*, para. 65, and *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 69.

¹⁴⁵ Cf. *Case of Goiburú et al. v. Paraguay*, *supra*, para. 164, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 121.

¹⁴⁶ Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 80, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 157.

¹⁴⁷ Cf. *Case of the Village of Los Josefinos Massacre v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 3, 2021. Series C No. 442, para. 114, and *Case Members and Militants of the Patriotic Union V. Colombia*, *supra*, para. 479.

¹⁴⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 181, and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 479.

protected by its Article 13(1).¹⁴⁹

111. In relation to the above, the Court has noted that, by expressly stipulating the right to seek and receive information, Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention.¹⁵⁰ Consequently, this Article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to such information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case.¹⁵¹ The law also protects the two dimensions, individual and social, of the right to freedom of thought and expression that must be guaranteed simultaneously by the State.¹⁵² In contexts of forced disappearance, the right of access to information requires the active participation of all the authorities involved. It is not enough to provide or allege the absence of information to guarantee the right of access to information; rather, efforts to establish the whereabouts of the victim must be exhausted.¹⁵³

112. In this case, the State recognized the violation of Articles 8(1) and 25(1) of the Convention, qualifying the actions aimed at investigating and sanctioning the material perpetrators of the disappearance of Fredy Núñez Naranjo as being insufficient. As warned (*supra*, para. 25), there is no dispute regarding such violation.

113. However, the State argued that Mr. Núñez Naranjo had been a victim of forced disappearance, and, in this sense, the acknowledgment made did not refer to the immediate search efforts that corresponded to the authorities, based on Articles 8(1) and 25(1) of the Convention, nor to the alleged violation of the obligation to investigate, prosecute, and punish those responsible for the forced disappearance, derived from Article I (b) of the IACFDP.

114. Given that it has been established that Fredy Núñez Naranjo was a victim of forced disappearance, there is no doubt that the rights provided for in Articles 8(1) and 25(1) of the American Convention, with respect to him and his family, include not only the investigation of what happened and the punishment of those responsible; but also, the execution of diligent and immediate search actions aimed at establishing the whereabouts of the victim and the consequent guarantee of the right to the truth.

115. According to the proven facts (*supra* para. 47), the State issued two police reports on July 15, 2001, the day Mr. Núñez Naranjo was arrested and subsequently kidnapped. Three days later, a police officer went to the community of Puñachizag, where he took a statement claiming that Fredy Núñez allegedly escaped from the jail cell where he was being held (*supra* para. 48).

116. On August 15th, the statements of two police officers were received. One of them specifically

¹⁴⁹ Cf. *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, *supra*, para. 200, and *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra*, para. 479.

¹⁵⁰ Cf. *Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 77, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 132.

¹⁵¹ Cf. *Case of Claude Reyes et al. v. Chile*, *supra*, para. 77 and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 132.

¹⁵² Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile*. Merits, Reparations, and Costs. Judgment of February 5, 2001. Series C No. 73, para. 67, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 132.

¹⁵³ Cf. *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 136.

pointed out that "no action had been taken on the matter,"¹⁵⁴ while the other stated that contact had been made with authorities from Quero Canton, without anyone cooperating to establish the whereabouts of Mr. Núñez Naranjo.¹⁵⁵ After the second complaint filed by the victim's father, other statements were collected (*supra* paras. 55 and 56), and on April 26, 2002, that is, more than nine months after the disappearance, an inspection was carried out at the police station from which Fredy Núñez Naranjo had been kidnapped by the villagers (*supra* para. 56). From that date, and at least until April 27, 2018, when a new investigation was opened for the crime of forced disappearance committed against Fredy Núñez Naranjo, there is no evidence that the State took any action aimed at determining the whereabouts of the victim.

117. The Court thus verifies that the actions taken by the State to determine the fate of the victim just after his disappearance were clearly insufficient, as they were limited to collecting testimonies. On the other hand, no timely search operation was carried out in the Puñachizag and Shaushi communities. The actions taken by the State, therefore, have not complied with the standards of diligence and immediacy required by this Court in the development of the rights to a fair trial and to judicial protection.

118. Furthermore, and as a result of the deficiencies in the investigation expressly acknowledged by the State, the actions taken through December 2002, that is, during the first 16 months after the victim's disappearance, led to the dismissal of the case, which was issued on December 11, 2002 (*supra* para. 60). Despite reopening the investigation, 16 years later (April 27, 2018), today there is not a single criminal proceeding open against the potential perpetrators of the crime of forced disappearance (*supra* para. 62) and, even less so, any sanction imposed against them.

119. In these terms and taking into account, as additional elements, that i) the State acknowledged its responsibility for the failure to fulfill the obligations to investigate and punish (*supra* par. 25), and ii), the Court concluded that a forced disappearance was committed (*supra* para. 98), this Court considers that the State is also responsible for the violation of the obligation to investigate and punish those responsible for the crime of forced disappearance, as provided in Article I (b) of the IACFDP. Similarly, based on the principle *iura novit curia*, the Court notes that, although its violation was not expressly alleged by the Commission or by the representatives, the State's omissions led to the violation of the right to truth. In view of the particular circumstances of the case, the Court considers that such violation arises from the failure to comply with the obligations derived from Articles 8(1), 13(1), and 25(1) of the Convention. Indeed, due to the lack of timely investigation into the incident and determination of the victim's whereabouts, the State has deprived the relatives of Fredy Núñez Naranjo of their right to know the truth about what happened.

120. Given the above, and considering the acknowledgement of state responsibility and its implications, as well as the evaluations carried out, the Court concludes that the State has violated the right to a fair trial and judicial protection, provided for in Articles 8(1) and 25(1) of the American Convention, in relation to the obligations set forth in Article 1(1) of the same instrument, to the detriment of Fredy Núñez Naranjo, his parents, Sixto Núñez and María Gregoria Naranjo, and his sisters, Silvia and Marcia Núñez Naranjo, for not having undertaken immediate and diligent search efforts to determine the whereabouts of Fredy Núñez Naranjo. Likewise, Ecuador is responsible for the violation, to his detriment, of the obligation to sanction those responsible for the crime of forced disappearance, established in Section I (b) of the Inter-American Convention on Forced Disappearance of Persons. Finally, based on the violations found, the Court states that

¹⁵⁴ Cf. Testimonial statement of MV of August 15, 2001 (case file of evidence, page 37).

¹⁵⁵ Cf. Testimonial statement of LAPV on August 15, 2001 (case file of evidence, page 323).

Ecuador violated the right to truth, derived from Articles 8(1), 13(1), and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the relatives of Fredy Núñez Naranjo.

VII.3 RIGHT TO HUMANE TREATMENT¹⁵⁶

A. Arguments of the Commission and the parties

121. The **Commission** stated that the forced disappearance of the alleged victim has generated a deep sense of pain, anguish, and uncertainty in their relatives, which has been worsened by violations of due process and judicial protection, "including their long search for justice, [... the lack] of clarification about what [... happened] [to] their loved one" and the absence of "procedure[s ...] to provide them with protection" against threats received from the parents of Fredy Núñez Naranjo, "as a consequence of their search for justice." According to the Commission, constitutes a violation of the right to humane treatment, established in Article 5(1), in relation to the obligations provided for in Article 1(1) of the same instrument, to the detriment of the relatives of Fredy Núñez Naranjo identified in the Merits report.

122. In their final written arguments, the **representatives** agreed that the State violated Article 5 in relation to 1(1) of the Convention to the detriment of the relatives of Fredy Núñez Naranjo.

123. The **State** opposed the alleged violation. In this regard, he noted that he made the necessary judicial remedies available to the relatives of Fredy Núñez Naranjo to carry out the criminal proceedings and arranged mechanisms allowing them to participate, ensuring their procedural guarantees and access to the justice system.

124. Regarding the alleged threats against the relatives of Fredy Núñez Naranjo, it was noted that, even though they did not file any complaint and "it has not been possible to prove the existence of a threat context that limited their right to access justice and that can be attributed to the Ecuadorian State," as a precaution, the mechanism of the National System for Protection and Assistance to Victims, Witnesses and Other Participants in the Criminal Process (SPA-VT) of the Prosecutor General was activated, and since October 2020, they have been under protection.¹⁵⁷

B. Considerations of the Court

125. On numerous occasions, this Court has cautioned that the family of the victims of certain human rights violations may, in turn, also be considered as victims, because of the suffering caused by the violations committed against their loved ones or due to later acts or omissions on the part of State authorities.¹⁵⁸ In this regard, in cases of forced disappearance, the Court has observed that uncertainty surrounding the whereabouts of loved ones is one of the main sources of psychological and moral suffering for the relatives of disappeared victims.¹⁵⁹ In addition, according to the Working Group on Enforced or Involuntary Disappearances, "[e]nforced

¹⁵⁶ Cf. Article 5(1) of the American Convention in relation to Article 1(1) of the same instrument.

¹⁵⁷ Cf. Report No. FGE-DNSPAVT-2023-021 issued by the Prosecutor General's Office on February 2, 2023 (case file of evidence, page 1796).

¹⁵⁸ Cf. Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114, and Case of Flores Bedregal et al. v. Bolivia, *supra*, para. 159.

¹⁵⁹ Cf. Case of Isaza Uribe et al. v. Colombia, *supra*, para. 165, and Case of Movilla Galarcio et al. v. Colombia, *supra*, para. 173.

disappearance can cause deep anguish, suffering and harm to victims and their relatives."¹⁶⁰

126. This Court has ruled that the presumption of the violation of the right to personal integrity is established *iuris tantum*, with regard to mothers and fathers, daughters and sons, spouses and permanent companions, as well as sisters and brothers of victims of certain human rights violations, provided that this accords with the particular circumstances of the case.¹⁶¹

127. In the instant case, the forced disappearance of Fredy Núñez Naranjo has extended over 22 years, during which time his family members have lived with the uncertainty and pain of not knowing the victim's whereabouts.¹⁶² They have filed various actions with the authorities that have not yielded any results (*supra* par. 118). As a result of such actions, they were singled out by the communities of Puñachizag and Shaushi and subject to threats if they did not leave their place of residence, amid the State's inaction (*supra* paras. 53 and 58). In these terms and, based on what was indicated in the statements compiled during the public hearing, the Court understands the violation of the right to humane treatment provided for in Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Sixto Núñez, María Gregoria Naranjo, Marcia Núñez Naranjo, and Silvia Núñez Naranjo.

VII.4

RIGHTS TO A FAIR TRIAL¹⁶³ AND JUDICIAL PROTECTION¹⁶⁴ REGARDING ALLEGED INJURIES TO HUMANE TREATMENT

A. Arguments of the Commission and the parties

128. The **Commission** noted that the State violated the rights to a fair trial and to judicial protection established in Articles 8(1) and 25(1) of the American Convention in relation to the right to humane treatment established in Article 5(1), as well as the obligations derived from Article 1(1) of the same instrument, to the detriment of Gregoria Naranjo and Marcia Núñez. In this regard, it recalled the floggings and mistreatment (*supra* para. 45 and note 50) that they apparently suffered in the community of Puñachizag and emphasized that, "when there is a complaint or reasonable grounds to believe that an act of torture has been committed, [... the State must] initiate an official letter and promptly launch an effective investigation." However, it stated that, in this case, "there is no record that the State has conducted investigations to identify those responsible for these acts."

129. The **representatives** did not specifically refer to the violations discussed in this section.

130. The **State**, in turn, emphasized that "the alleged acts of violence were not committed by state agents" and that, "by not reporting [...] the alleged incidents, [the alleged victims] did not

¹⁶⁰ Cf. Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances Document A/HRC/45/13/Add.3 of August 7, 2020, para. 60.

¹⁶¹ Cf. *Case of Blake v. Guatemala*, *supra*, para. 114, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 159.

¹⁶² The father of the alleged victim expressed, "I hope something is done because I want [...] to see my son, [whether] he is alive or dead." Cf. Statement by Sixto Núñez given at a public hearing on February 3, 2023. On her part, the mother of the alleged victim stated, "I demand justice[, ...] that they return my son to me." Cf. Statement by María Gregoria Naranjo given at a public hearing on February 3, 2023.

¹⁶³ Cf. Article 8(1) of the American Convention in relation to Article 1(1) of the same instrument.

¹⁶⁴ Cf. Article 25(1) of the American Convention in relation to Article 1(1) of the same instrument.

al[low] the State to intervene" to mitigate any dangerous situation. Nonetheless, it was indicated that a process has been initiated for the alleged crime of torture, and it is currently under investigation, with certain procedures already having been carried out.¹⁶⁵ The State did not specify on what date such investigation had begun, but requested that this fact be evaluated in light of the principle of subsidiarity of the Inter-American Human Rights System.

B. Considerations of the Court

131. The obligation to ensure the human rights enshrined in the American Convention is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation, but rather, it also requires the state to conduct itself so as to effectively ensure the free and full exercise of human rights.¹⁶⁶ One of the conditions to effectively guarantee the right to life and personal integrity is fulfilling the duty to investigate the violation of such rights, which is derived from Article 1(1) of the American Convention, in conjunction with the substantive right which should be preserved, protected, or guaranteed.¹⁶⁷

132. The Court has verified that the authorities were aware of the physical assaults that were apparently caused by the members of the Puñachizag and Shaushi communities against María Gregoria Naranjo and Marcia Núñez Naranjo, at least since August 16, 2001, as such matters are found in the police report issued on that date (*supra* para. 45 and note 50).¹⁶⁸ However, the investigation related to these events,¹⁶⁹ for the alleged crime of torture, was only initiated at a date later than 2018, that is, more than 17 years after the alleged violations. While the Court positively values the initiation of said preliminary investigation, it cautions that the extensive period elapsed since the events under investigation occurred, and its initiation is not justified and constitutes, in turn, a significant obstacle for it to determine what happened and to sanction the parties eventually found to be responsible.

133. Therefore, the Court considers that the State failed to fulfill its obligation to promptly initiate a serious, impartial, and effective investigation aimed at determining the truth, as well as the trial and punishment of all those responsible for the allegedly occurred events. For this reason, the State is responsible for the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of María Gregoria Naranjo and Marcia Núñez Naranjo.

¹⁶⁵ Noted that the following has been carried out: (i) "[t]aking of statements"; (ii) "[p]eriodic visits to the relatives of Mr. Fredy Núñez"; (iii) "report on the social environment of all family members" and (iv) "[m]edical-psychiatric assessment report of Naranjo María Georgina and Núñez Naranjo Marcia Lorena."

¹⁶⁶ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 166 and 167, and *Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 1, 2021. Series C No. 439, para. 82.

¹⁶⁷ Cf. *Case of Baldeón García v. Peru. Merits, Reparations, and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 92, and *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 147.

¹⁶⁸ According to a police report, the three detainees were transferred to the community of Puñachizag where "after flogging the two women, they have set them at liberty in the community of Shaushi." Cf. Police Report No. 1123-PJT-CP9-2001 of August 16, 2001 (case file of evidence, page 25). According to the statement given by Sixto Núñez, "they b[lindfolded] [all] three of them and tied their hands behind their backs, beating them mercilessly." Cf. Statement given by Sixto Núñez on April 29, 2002 before the Prosecutor of Tungurahua (case file of evidence, page 34) and Provisional stay of proceedings by the Fourth Criminal Court of Tungurahua of December 11, 2002 (case file of evidence, page 45). According to María Gregoria Naranjo, "[they] hit her and her daughter Marcia Núñez Naranjo, but not too hard." Cf. Statement by María Gregoria Naranjo given at the public hearing on February 3, 2023.

¹⁶⁹ Processed under Preliminary Investigation No. 180101820060459. Cf. Memorandum No. FPT-FCQ-2020-00078-M from the Prosecutor General's Office of December 18, 2020 (case file of evidence, page 1556) and Memorandum No. FPT-FCQ-2021-00024-M from the Prosecutor General's Office of March 18, 2021 (case file of evidence, page 1560).

VIII REPARATIONS¹⁷⁰

134. Based on the provisions of Article 63(1) of the American Convention, the Court has held that any violation of an international obligation that has caused harm entails the duty to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.¹⁷¹

135. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the rights that have been violated and repair the harm caused.¹⁷² Accordingly, the Court has considered the need to provide different types of reparation in order to fully redress the damage; thus, in addition to compensation for pecuniary damages, other types of measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the severity of the harm caused.¹⁷³

136. Additionally, The Court has also established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Consequently, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.¹⁷⁴

137. Consequently, in accordance with the considerations set forth on the merits and the violations declared in this judgment, the Court will now examine the claims presented by the Commission, as well as the State's observations, in light of the criteria established in its case law concerning the nature and scope of the obligation to make full reparation, for the purpose of ordering measures to redress the harm caused to the victim.¹⁷⁵

A. Injured Party

138. Pursuant to Article 63(1) of the American Convention, the Court reiterates that it considers an injured party to be anyone who has been declared a victim of the violation of any right recognized therein. Therefore, this Court considers injured parties to be Fredy Núñez Naranjo and the following individuals, members of his household: Sixto Núñez Naranjo (father), María Gregoria Naranjo (mother), Marcia Núñez Naranjo (sister) and Silvia Núñez Naranjo (sister).

B. Obligation to investigate in order to determine individual responsibilities

139. The **Commission** requested that the State be ordered to "carry out the domestic procedures

¹⁷⁰ Application of Article 63(1) of the American Convention.

¹⁷¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Olivera Fuentes v. Peru*,, *supra*, para. 130.

¹⁷² Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 24, and *Case of Olivera Fuentes v. Peru. Preliminary objections, Merits, Reparations, and Costs*. Judgment of February 4, 2023. Series C No. 484, para. 131.

¹⁷³ Cf. *Case of the Las Dos Erres Massacre v. Guatemala*,, *supra*, para. 226, and *Case of Olivera Fuentes v. Peru*,, *supra*, para. 131.

¹⁷⁴ Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 110, and *Case of Olivera Fuentes v. Peru*,, *supra*, para. 132.

¹⁷⁵ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, paras. 25 and 26, and *Case of Olivera Fuentes v. Peru*, *supra*, para. 133.

related to human rights violations" that occurred in the instant case, "conduct the corresponding processes for the crime of forced disappearance of Fredy Núñez Naranjo," as well as "investigate the injuries suffered by Gregoria Naranjo and Marcia Núñez," in order to "fully clarify the facts, identify all those responsible and impose the corresponding sanctions."

140. The **representative** did not mention the measures requested by the Commission.

141. In regard to the investigation procedures to clarify what happened to Mr. Núñez Naranjo, the **State** reaffirmed that, through the Prosecutor General's Office, it initiated an investigation in a timely manner on the date of the events, and subsequently, it opened a new investigation for the crime of forced disappearance to the detriment of Mr. Fredy Núñez (*supra* para. 62), which is in the "preliminary investigation phase" (*supra* para. 62) and "has been substantiated through various investigative procedures and continues to be underway " (*supra* note 93). Additionally, the State pointed out that its domestic regulations were modified, classifying forced disappearance according to international standards. It pointed out that "it has fulfilled its obligation by complying with the recommendations of the [Commission], in order to have the corresponding processes to investigate what happened to the alleged victim."

142. In regard to the investigation of the alleged violations of the humane treatment of Mrs. Gregoria Naranjo and Marcia Núñez, it was noted that the Prosecutor General reported the opening of an investigation for the alleged crime of torture against the alleged victims (*supra* para. 62). Furthermore, the State mentioned the proceedings carried out (*supra* note 95) and clarified that it "continues to investigate the alleged acts of violence" (*supra* para. 62), with which it has sought compliance with the recommendation provided in the Merits report of the Commission. Furthermore, it was noted that, in October 2020, the alleged victims were incorporated into the Victim Protection System National System for Protection and Assistance to Victims, Witnesses and Other Participants in the Criminal Process (SPAVT), "in order to develop the appropriate mechanisms to safeguard the integrity of Mr. Fredy Núñez's relatives" and that they currently continue to benefit from such protection (*supra* note 93).

143. The **Court** has established that the State failed to fulfill its obligation to promptly investigate the forced disappearance of Mr. Núñez Naranjo (*supra* paras. 29 and 119), as well as the alleged injuries suffered by Gregoria Naranjo and Marcia Núñez (*supra* para. 133). Considering the opening of criminal proceedings after 2018 for the crimes of forced disappearance and torture, respectively, remain open (*supra* para. 62), and in light of the consistent case law of this Court,¹⁷⁶ the Court orders that the State must continue the ongoing investigations and the criminal proceedings effectively and with due diligence in order to fully clarify what happened and identify, judge and, if applicable, punish all the perpetrators and participants of the reported events for the corresponding criminal effects, within a reasonable time. Due diligence in the investigation implies that all of authorities are obligated to collaborate in gathering evidence and, therefore, they must provide the intervening judicial body, the Prosecutor's Office, or the competent authority involved in the proceedings, with all of the information and must abstain from actions that might obstruct the investigative process.¹⁷⁷

144. In addition, the State must ensure that the following criteria are observed: a) conduct the relevant investigation, without any omissions in the collection of evidence and in the follow-up of

¹⁷⁶ Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 174, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 178.

¹⁷⁷ Cf. *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 103, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 138.

the logical lines of investigation; b) Investigate with due diligence, including all the elements involved in the forced disappearance; c) identify and individualize the presumed intellectual and material perpetrators; d) ensure that the competent authorities conduct the pertinent investigations *ex officio*, and that they have available and use all the necessary logistical and scientific resources to collect and process the evidence and, specifically, that they have the authority to examine the relevant documentation and information in order to investigate the denounced acts and to conduct, in a timely manner, the essential actions and inquiries to shed light on what occurred; e) in view of the seriousness of the events and ongoing or permanent nature of Mr. Núñez Naranjo's disappearance, by principle and in accordance with relevant international law, provisions of statutes of application cannot be applied, nor can defenses of liability be invoked as a pretext to hinder the investigation,¹⁷⁸ and f) in the investigation into the allegations of torture, the competent authorities must take into account the international standards for documentation and interpretation of forensic evidence proving the commission of acts of torture, particularly those defined in the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."¹⁷⁹

C. Determination of the whereabouts of Mr. Fredy Núñez Naranjo

145. The **Commission** requested that the State be ordered to "[i]nvestigate [...] the whereabouts of Fredy Marcelo Núñez and, if applicable, take the necessary measures to identify and deliver his mortal remains to his relatives according to their wishes."

146. The **representative** did not address what was requested by the Commission.

147. The **State** reported that it has undertaken efforts aimed at complying with the recommendations of the Commission. In this regard, it pointed out that the Prosecutor General's Office was conducting investigations to gather evidence that would allow it to fulfill its international obligations and punish those responsible for the disappearance of Mr. Fredy Núñez. It stated that this investigation continues and that, for its effective compliance, "the State is operating in a coordinated manner with all competent institutions, to clarify the facts" and judicial guarantees and conventional standards have been met. Likewise, it pointed out some of the search procedures that have been carried out (*supra* note 93).

148. In the instant case, the whereabouts of Mr. Núñez Naranjo are still unknown (*supra* para. 45). The **Court** ruled that the State violated the rights to truth, to a fair trial, and judicial protection due to the insufficiency of the actions taken for their search (*supra* para. 120). The Court emphasizes that Mr. Núñez Naranjo has been a victim of forced disappearance for nearly 22 years, so it is a fair for his next of kin to have a reasonable expectation that his whereabouts would have been identified, which makes it a necessary reparation measure generating the correlative duty for the State to satisfy¹⁸⁰ in order for the family to alleviate the anguish and suffering caused by the uncertainty.¹⁸¹

¹⁷⁸ Cf. *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, para. 104, and *Case of Movilla Galarcio et al. v. Colombia*, *supra*, para. 200.

¹⁷⁹ Cf. *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 270, and *Case of Valencia Campos et al. v. Bolivia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of October 18, 2022. Series C No. 469, para. 313.

¹⁸⁰ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 69, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 184.

¹⁸¹ Cf. *Case of Ticona Estrada et al. v. Bolivia*, *supra*, para. 155, and *Case of Flores Bedregal et al. v. Bolivia*, *supra*, para. 184.

149. The Court assesses positively the search efforts made to date, particularly during the last few years, to locate Mr. Núñez Naranjo. Without prejudice to the foregoing, this Court orders the State to continue with the search actions. These actions must be diligently pursued through appropriate judicial and/or administrative channels, making every effort to determine, as soon as possible, the whereabouts of Fredy Núñez Naranjo or the identification of his mortal remains. For this, the State must have all the adequate and appropriate human, technical and scientific resources and develop the necessary or convenient institutional articulation actions.¹⁸² In relation to such proceedings, a communication strategy must be established with the families and a framework for coordinated action must be agreed upon to ensure their participation, knowledge, and presence, in accordance with the pertinent guidelines and protocols. In the event that it is established that the victim has passed away, the mortal remains must be delivered to their family members, after a reliable verification of identity, as soon as possible and at no cost to them. Also, the State must cover the funeral expenses, as appropriate, in accordance with the wishes of the next of kin.¹⁸³

150. Now, this Court notes that, based on the International Convention for the Protection of All Persons from Enforced Disappearances¹⁸⁴ and other important international instruments,¹⁸⁵ the United Nations Committee on Enforced Disappearances adopted the Guiding Principles for the search of disappeared persons.¹⁸⁶ The Court understands it is important that they be taken into account in compliance with the ordered reparations. The following guidelines stand out in the aforementioned principles:

- a) The search for a disappeared person should continue until his or her fate and/or whereabouts have been determined with certainty, which implies that such person is "is again under the protection of the law" or, if they turn out to be deceased, they have been "fully identified"¹⁸⁷;
- b) The victim's family members, who are also individuals affected, and individuals who represent or assist them have the right to participate in the search, which includes, among other aspects, access to information, without prejudice to the necessary measures to preserve the integrity and effectiveness of the criminal investigation or the search itself.
- c) The search should be conducted on the basis of a "comprehensive strategy." All reasonable hypotheses concerning the person's disappearance should be explored, without ruling out any of these,

¹⁸² Cf. *Case of Contreras et al. v. El Salvador. Merits, Reparations, and Costs*. Judgment of August 31, 2011. Series C No. 232, para. 191, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 117.

¹⁸³ Cf. *Case of Contreras et al. v. El Salvador, supra*, paras. 191 and 192 and *Case of Flores Bedregal et al. v. Bolivia, supra*, paras. 186 and 187.

¹⁸⁴ Ratified by Ecuador on October 20, 2009. In force for the State as of the thirtieth day following deposit of the instrument of ratification, in accordance with Article 39(2) of the treaty.

¹⁸⁵ The document clarifies that the Principles "[a]lso take into account the experience of other international bodies and various countries around the world" (Introduction, para. 1). Cf. Guiding principles for the search for disappeared persons by the UN Committee on Enforced Disappearances, April 16, 2019.

¹⁸⁶ Approved by the Committee on Enforced Disappearance during its 16th session (April 8 to 18, 2019). Doc. CED/C/7.

¹⁸⁷ However, the document clarifies (in its Principle 7.4) that "[i]f the disappeared person has not been found and there is credible evidence beyond a reasonable doubt of his or her fate or whereabouts, the search may be suspended when it is not physically possible to recover the person and once all obtainable information has been exhaustively analysed and all possible scenarios investigated. This decision should be taken in a transparent manner and requires the prior and informed consent of the family members or persons close to the disappeared person."

unless it cannot be supported based on objective and verifiable criteria. That strategy must "strategy should take into account the contextual analysis."

d) "[T]he activities to be performed are determined in an integrated fashion, through all necessary and appropriate means and procedures for the identification, release or exhumation of the disappeared person or establishment of the person's identity. The comprehensive search strategy should include an action plan and a timeline and should be evaluated periodically."

e) The search "should be centralized under, or coordinated by, a competent body that ensures effective coordination with all the other entities whose cooperation is needed for the search to be effective, exhaustive and prompt."

f) "The search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing." "When the search is conducted by non-judicial authorities independent of those that make up the justice system, mechanisms and procedures should be established to ensure cooperation, coordination and an exchange of information."

151. In order to comply with the specified actions, the State must put together a specific search plan for Mr. Fredy Núñez Naranjo within a term of three months from the notification of this judgment. This plan must follow the guidelines indicated in the two preceding paragraphs. Ecuador must allow the intervention of Mr. Núñez Naranjo's declared victims' family members, and/or their representatives, in the preparation of this specific search plan. The State may not take the established term or any eventual delays in the adoption of the orderly plan to suspend search actions. The State must inform this Court immediately once the search plan has been completed, and must send the Court a copy of the document in which it is recorded. The submission of that plan is independent of the duty to present the first report arranged in operative paragraph 13 of this judgment, within the term of one year counted from the notification of this judgment.

D. Rehabilitation Measures

152. The **Commission** required that "an appropriate program for the care of Fredy Núñez Naranjo's relatives be implemented, in consultation with them."

153. The **representative** did not refer to the measure requested by the Commission.

154. The **State** indicated that the Ministry of Public Health provides "comprehensive care to the relatives of Mr. Núñez Naranjo," and that "several services have been provided in the [...] Quero Canton, [...] which include] family medicine, general medicine, psychology, dentistry, clinical laboratory."

155. The **Court** considers, as it has in other cases,¹⁸⁸ that despite the actions taken by the State, a remedy would be required aimed at providing adequate attention to the psychological and/or

¹⁸⁸ Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 114.

psychiatric sufferings endured by the relatives of Mr. Núñez Naranjo (*supra* para. 127). As a result, the Court considers that the State must provide, free of charge, through its specialized health institutions and immediately the appropriate and effective psychological and/or psychiatric treatment that victims may require, with prior informed consent and for as long as necessary, including the free provision of any necessary medications, taking into account the conditions of each beneficiary. Furthermore, the respective treatments should be provided, inasmuch as possible, at the centers chosen by the victims. For this purpose, the victims have a term of six months, counted from the notification of this judgment, to request said treatment from the State.¹⁸⁹ When providing psychological and/or psychiatric treatment, the particular circumstances and needs of each victim must also be considered, based on what is agreed with each of them and following an individual evaluation. In turn, the State will have a term of three months after receiving such request to effectively provide the requested psychological and/or psychiatric care.

E. Measures of Satisfaction

E.1 Publication of the Judgment

156. The **Commission** did not request the publication of the judgment herein.

157. Notwithstanding the foregoing, the **Court** orders, as it has done in other cases,¹⁹⁰ that the State publish, within a term of six months from the notification of this judgment, in a legible and adequate font size: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette, using a legible and adequate font size; b) the official summary of this judgment prepared by the Court, once, in a newspaper with wide national circulation, using a legible and adequate font size, c) this judgment in its entirety, made available for one year, on an official National Government *website*, in a manner accessible to the public and from the home page of the website. Similarly, within that same term, the State must make the Court's judgment public by posting on the official social media account of the Presidency of the Republic. Such posts must indicate that the Inter-American Court has issued a judgment herein declaring the international responsibility of the State, provide the link where the full text can be accessed directly, and remain available for a period of one year. This post must be made at least five times, during business hours, and remain posted on the respective profile on those social networks. The State must inform this Court immediately once it proceeds to make each of the ordered posts, regardless of the one-year term it has to present its first report, as provided in operative paragraph 13 of this judgment.

E.2 Act of public acknowledgement of responsibility

158. The **Commission** requested the establishment and dissemination of the historical truth of the events.

159. The **representative** and the **State** did not specifically address this request.

160. On multiple occasions, this **Court** has ordered an act of public acknowledgment of State responsibility, in reparation for the victims and as a guarantee of non-repetition, in line with the

¹⁸⁹ Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 189.

¹⁹⁰ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Olivera Fuentes v. Peru, supra*, para. 145.

magnitude of the declared violations and particularly in cases of serious human rights violations.¹⁹¹ The effect of this public act is to recover the memory of the victims, recognize their dignity and give consolation to their families.¹⁹²

161. In that sense, in order to repair the damage caused to the victims and to prevent events like those in this case from happening again, it is ordered that the State carry out an Act of public acknowledgment of international responsibility in relation to the events of this case. In that act, the State must refer to the facts and human rights violations declared in this judgment. The State must ensure the participation of the victims declared in this judgment, if they so wish, and invite their representatives in national and international instances to the event. The State and the victims or their representatives must agree on the method of carrying out the public act, as well as pertinent details, including where and when it is to be held. In addition, the State must broadcast this act over the media in the broadest way possible, including broadcasting over radio, television, and social networks of the Presidency of the Republic. The state authorities who must be present or participate in this event must be Senior officials of the State. The State has a term of one year from the notification of this judgment to fulfill this obligation.

F. Other measures requested

162. The **Commission** requested, as guarantees of non-repetition, to adopt legislative, administrative, or other measures to: a) "eradicate the Peasant Defense Boards as entities that perform public duties"¹⁹³ and b) "that investigations into forced disappearance of persons in Ecuador, including the investigation and criminal proceedings, as well as the search processes for remains of disappeared persons, comply with the standards described in the Merits Report."

163. The **representative** did not refer to the measures requested by the Commission.

164. Regarding the request for the eradication of the Peasant Defense Boards as entities that perform public duties, the **State** noted that it should be taken into consideration that "[these] began as a social organization in the Province of Tungurahua in the early sixties, with the fundamental objective of safeguarding the individual and collective ownership of peasant communities," which is in accordance with the community participation that it has encouraged through its Political Constitution and laws, and on the other hand, that "it has always guaranteed a permanent police presence in Quero Canton of Tungurahua Province."

165. Regarding the request to adopt measures to ensure that investigations and criminal proceedings, as well as the search processes for the remains of missing persons, comply with the standards described in the Merits Report, the **State** noted that it implemented training processes

¹⁹¹ Cf. *Inter alia*, *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations*. Judgment of November 19, 2004. Series C No. 116, para. 100; *Case of Goiburú et al. v. Paraguay, supra*, para. 173; *Case of Gelman v. Uruguay. Merits and Reparations, supra*, para. 47; and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations, and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 312; *Case of Garzón Guzmán et al. v. Ecuador, supra*, para. 110; *Case of Julien Grisonas family v. Argentina, supra*, para. 276; *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 225; *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 586, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 193.

¹⁹² Cf. *Case of Trujillo Oroza v. Bolivia. Reparations and Costs*. Judgment of February 27, 2002. Series C No. 92, para. 77; *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations, and Costs*. Judgment of October 25, 2012. Series C No. 252, para. 357; *Case of Julien Grisonas family v. Argentina, supra*, para. 276, and *Case of Maidanik et al. v. Uruguay, supra*, paras. 234 and 235.

¹⁹³ Cf. Page 3 of the brief submission of the case by the Commission (case file on the merits, page 4).

for police officers to prevent the recurrence of such incidents.¹⁹⁴

166. The Court finds that the issuance of this judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victims. As a result, it does not consider it necessary to order the adoption of additional reparations.

G. Redress

167. The **Commission** asked the Court to order the State to pay a fair compensation to adequately repair the human rights violations declared in the Merits Report, including both pecuniary and non-pecuniary reparations.

168. In their final written arguments, the **representative** requested keeping in mind, for compensation purposes, that Fredy Núñez Naranjo "was the one who contributed with work and money to the household of his parents and siblings."

169. The **State** did not mention that it had paid any type of indemnity.

G.1 Pecuniary Damages

170. This **Court** has developed in its case law the concept of pecuniary damages and has established that it involves the loss or impairment of the victims' income, expenses made resulting from the events, and pecuniary consequences that have a causal nexus to the facts of the case.¹⁹⁵ Likewise, case law has reiterated the compensatory nature of the indemnities, whose nature and amount depend on the damage caused, this means that they are not supposed to enrich or impoverish the victim or their heirs.¹⁹⁶

171. Although no evidence was provided regarding the amounts corresponding to pecuniary damage, it is presumable that the relatives of Mr. Fredy Núñez Naranjo incurred various expenses due to his disappearance and search for 22 years. In fact, the Court recalls that, facing the victim's disappearance, his family members, and especially Sixto Núñez, made several inquiries with the authorities. The Court considers that the State must provide compensation for these expenses, as they have a direct causal nexus with the violations in this case. Since there is no evidence to determine the exact amount of expenses incurred by such proceedings, taking into account the particular circumstances of the case, the Court deems it appropriate to set, in equity, the amount of USD \$15,000.00 (fifteen thousand United States dollars) as compensation for actual damages, which must be delivered to Mr. Núñez Naranjo's parents, Sixto Núñez and María Gregoria Naranjo, and divided equally.

172. Regarding lost profit, the Court considers that, as it has done in other cases of forced disappearances where the whereabouts of the victim are unknown,¹⁹⁷ it is possible to apply the criteria of compensation for lost wages, which includes the income that would have been received

¹⁹⁴ Cf. Ministry of Government, Official Letter No. MDG-VDI-SSC-DDHIG-2020-0072-O dated December 21, 2020 (case file of evidence, page 1606).

¹⁹⁵ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 202.

¹⁹⁶ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Nissen Pessolani v. Paraguay. Merits, Reparations, and Costs*. Judgment of November 21, 2022. Series C No. 477, para. 126.

¹⁹⁷ Cf. *Case of Bámaca Velásquez v. Guatemala,, supra*, para. 43; *Case of Maidanik et al. v. Uruguay, supra*, para. 276, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 206.

during their probable lifetime. According to the allegations made by the parties, Fredy Núñez Naranjo was working as a professional driver and was assisting in the family business at the time of the events (*supra* para. 35). However, there is not enough evidence relating to his income. Therefore, the Court decides to set, in equity, the total amount of USD \$35,000.00 (thirty-five thousand dollars of the United States of America) as compensation for lost earnings in favor of Mr. Fredy Núñez Naranjo, a sum that should be divided equally between his parents, Sixto Núñez and María Gregoria Naranjo.

G.2 Non-Pecuniary Damages

173. In its case law, the Court has developed the concept of non-pecuniary damage, and has established that this can include both the suffering and distress caused to the direct victims and their next of kin, as well as the impairment of values that are highly significant to them, as well as non-pecuniary disruptions to the living conditions of the victim or their family.¹⁹⁸ On the other hand, since it is not possible to assign them a precise monetary equivalent, for the purposes of making integral reparation to the victims they may only be compensated by the payment of a sum of money or the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.¹⁹⁹

174. First, taking into account the compensations ordered by the Inter-American Court in other cases of forced disappearance of persons, the circumstances of the present case, the violations committed, the suffering caused, and the time elapsed, the Court deems it appropriate to set, in equity, the amount of USD \$80,000.00 (eighty thousand United States dollars) in favor of Fredy Núñez Naranjo, which must be distributed equally to his parents, Sixto Núñez Naranjo and María Gregoria Naranjo.

175. Likewise, additionally, as compensation for the damages suffered directly as a result of the violation of their rights to judicial guarantees, to judicial protection, to the punishment of those responsible for the forced disappearance, to the truth and to humane treatment, the sum of USD \$20,000.00 (twenty thousand United States dollars) for each of the parents of Fredy Núñez Naranjo, Mr. Sixto Núñez and Mrs. María Gregoria Núñez Naranjo, and USD \$10,000.00 (ten thousand United States dollars) for each of his sisters, Mrs. Marcia and Mrs. Silvia Núñez Naranjo.

176. Similarly, the Court believes that in addition to the non-pecuniary damages suffered directly by the relatives of Mr. Núñez Naranjo due to his forced disappearance (*supra* para. 127), Mrs. María Gregoria Naranjo and Marcia Núñez Naranjo experienced differentiated suffering due to the absence of a prompt and effective investigation into the injuries they allegedly experienced (*supra* para. 132). Therefore, the Court sets, in equity, the amount of USD \$15,000.00 (fifteen thousand United States dollars) for each of them, for non-pecuniary damages.

H. Costs and Expenses

177. The Court recalls that, in accordance with its case law, costs and expenses form part of the concept of reparation, because the efforts made by the victims in order to obtain justice, both at the national and the international level, imply expenditures that must be compensated when the

¹⁹⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Flores Bedregal et al. v. Bolivia, supra*, para. 212.

¹⁹⁹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala,, supra*, para. 84, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 132.

international responsibility of the State is declared in a judgment.²⁰⁰ Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, including the expenses incurred before the authorities of the domestic jurisdiction, as well as those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their quantum is reasonable.²⁰¹

178. In the instant case, there is no evidence in the case file to support the costs and expenses incurred by the victims. However, the Court considers it reasonable to assume that such procedures necessarily involved expenditures, so it determines that the State must pay the amount of USD \$8,000.00 (eight thousand United States dollars), in favor of their representative, the lawyer Renato Javier Villacís Tubon.

I. Method of compliance with the ordered payments

179. The State must make payment of the amounts established as compensation for pecuniary and non-pecuniary damages, and costs, as established in this judgment, directly to the individuals identified herein (*supra* para. 138), within the term of one year, counted from the notification of this judgment. This is without prejudice to the possibility of making payments within a shorter term. In the event of the beneficiary individuals dying before the respective compensations are paid, such payments will be made directly to their heirs, in accordance with the applicable domestic law.

180. The State must comply with its pecuniary obligations by paying in U.S. dollars.

181. If due to reasons attributable to the individuals entitled to compensation or their heirs, it is not possible to make the payment of the determined amounts within the indicated term, the State will deposit such amounts in their favor in an account or certificate of deposit in a solvent Ecuadorian financial institution, in United States dollars, and under the most favorable financial conditions allowed by legislation and banking practices. If the corresponding compensation is not claimed after ten years have elapsed, the amounts will be returned to the State with accrued interest. In the event that the above is not possible, the State must ensure the availability of funds for a term of ten years.

182. The respective amounts, corresponding to compensation for pecuniary and non-pecuniary damages, and costs and expenses, must be paid to the individuals indicated in full, in accordance with this judgment, without deductions arising from possible tax obligations.

183. In the event of the State falling into arrears, it must pay interest on the amount owed corresponding to the moratorium bank interest rate in Ecuador.

²⁰⁰ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Olivera Fuentes v. Peru, supra*, para. 172.

²⁰¹ Cf. *Case of Garrido and Baigorria v. Argentina, supra*, para. 82, and *Case of Olivera Fuentes v. Peru, supra*, para. 172.

IX OPERATIVE PARAGRAPHS

184. Therefore,

THE COURT

DECIDES,

unanimously,

1. To accept the partial admission of international responsibility made by the State, in the terms of paragraphs 14 to 32 of this judgment.

DECLARES,

that:

2. The State is responsible for the violation of the rights to acknowledgment of juridical personality, to life, to humane treatment, and to personal liberty, recognized in Articles 3, 4(1), 5(1), 5(2), and 7 of the American Convention on Human Rights, in relation to Article 1(1) of the same treaty and Article I (a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Fredy Marcelo Núñez Naranjo, in the terms of paragraphs 88 to 100 of this judgment.

3. The State is responsible for the violation of the rights to fair trial and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to its Article 1(1), as well as with Article I (b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Fredy Marcelo Núñez Naranjo, Sixto Núñez, María Gregoria Naranjo, Silvia Núñez Naranjo, and Marcia Núñez Naranjo. As well as the right to truth, derived from Articles 8(1), 13(1), and 25(1) of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of Sixto Núñez, María Gregoria Naranjo, Silvia Núñez Naranjo, and Marcia Núñez Naranjo. All of this, in the terms of paragraphs 112 to 120 of this judgment.

4. The State is responsible for the violation of the right to humane treatment, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Sixto Núñez, María Gregoria Naranjo, Silvia Núñez Naranjo, and Marcia Núñez Naranjo, in the terms of paragraph 127 of this judgment.

5. The State is responsible for the violation of the rights to a fair trial and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of María Gregoria Naranjo and Marcia Núñez Naranjo, in the terms of paragraphs 132 and 133 of this judgment.

AND ESTABLISHES,

6. This judgment constitutes per se a form of reparation.

7. The State shall continue the ongoing criminal investigations for the crimes of forced disappearance and torture, in the terms of paragraphs 143 and 144 of this judgment.

8. The State shall continue the search actions for Fredy Núñez Naranjo, in the terms of paragraphs 148 to 151 of this judgment.

9. The State shall provide the rehabilitation measures set forth in paragraph 155 of this judgment.

10. The State shall make the publications ordered in paragraph 157 of this judgment.

11. The State shall carry out a public act of acknowledgement of responsibility, in the terms of paragraphs 160 and 161 of this judgment.

12. The State shall pay the amounts established in paragraphs 171, 172, 174, 175, 176, and 178 of this judgment as compensation for pecuniary and non-pecuniary damages, and reimbursement of costs and expenses, pursuant to paragraphs 179 to 183 of this judgment.

13. Within the term of one year from notification of this judgment, the State shall submit a report to the Court on the measures adopted to comply with it, without prejudice to the provisions of paragraphs 151 and 157 of this judgment.

14. The Court shall monitor full compliance with this judgment, in the exercise of its powers and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed once the State has fully complied with the provisions hereof.

Judge Verónica Gómez and Judge Rodrigo Mudrovitsch announced their concurring opinions.

Written in Spanish in San José, Costa Rica, on May 23, 2023.

I/A Court H.R. *Case of Núñez Naranjo et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of May 23, 2023.

Ricardo C. Pérez Manrique
President

Eduardo Ferrer Mac-Gregor Poisot

Humberto A. Sierra Porto

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

CASE OF NÚÑEZ NARANJO ET AL. V. ECUADOR

CONCURRING OPINION

Judge Verónica Gómez and Judge Rodrigo Mudrovitsch

I. INTRODUCTION

1. The judgement of the Court herein analyzes the international responsibility of the Ecuadorian State for violations of the American Convention on Human Rights due to the enforced disappearance and lack of investigation into the whereabouts of Mr. Fredy Núñez Naranjo, the physical assaults suffered by his relatives, Ms. María Gregoria Naranjo and Marcia Núñez Naranjo, and their lack of effective judicial investigation.¹ The majority opinion reaffirms the protection parameters consolidated in the inter-American case law framework regarding enforced disappearance and provides contributions regarding the consideration of "force majeure" in establishing state obligations.

2. While the judgment declares the Ecuadorian State responsible for the enforced disappearance of Mr. Fredy Núñez Naranjo and the damages caused to his family, the court fails to rule on the legal consequences of the possible authorization, support, or acquiescence of the State in relation to the actions of non-state actors operating under its jurisdiction. The analysis of the case starts from the premise that the international responsibility for the enforced disappearance of the victim is mainly attributable to the State due to the failure of its role as guarantor during the period in which Fredy Núñez Naranjo remained detained in the Quero Canton Police Station. This finding is framed within the factual framework of the case and it is in this context that we support the conclusions of the judgment and the measures of reparation for the harm caused to the victims of the particular case. However, in accordance with Article 66(2) of the American Convention on Human Rights, it is appropriate to express our respectful dissent in argumentative terms, in the face of the majority's decision not to delve deeper into the analysis of state responsibility for tolerance towards the actions of non-state actors within their jurisdiction.

3. Given the above, the first section of this concurring opinion explains why the absence of an analysis on state responsibility for acts of individuals affects the integrity of the judgment's reasoning, and the second section provides standards of international human rights law that should have been considered in the Court's reasoning.

II. FAILURE TO ADDRESS STATE RESPONSIBILITY IN THE MAJORITY JUDGMENT

4. According to the judgment, on July 15, 2001, Fredy Núñez Naranjo was detained by police officers from the Quero Canton Police Station after a fight with OM and OF, members of the Puñachizag and Shaushi communities, which are

¹ Cf. *Case of Núñez Naranjo et al. v. Ecuador. Merits, Reparations, and Costs*. Judgment of May 23, 2023. Series C No. 492, para. 32.

located nearby. After the three individuals were imprisoned, around four hundred individuals belonging to the Puñachizag and Shaushi communities showed up at the police station seeking to free OM and OF and carry out justice with their own hands against Fredy Núñez Naranjo, whom they took to the Puñachizag Community along with his family members, Ms. María Gregoria Naranjo and Ms. Marcia Núñez Naranjo. After suffering attacks, the women were eventually released. As to Mr. Núñez Naranjo, since that date, there has been no information about his whereabouts other than the statements from the Peasant Board of the Quero Canton suggesting that he may have been taken to the Shaushi Community jail cells.²

5. During the process, the State made a partial acknowledgment of international responsibility for the violation of Articles 8(1) and 25(1) in relation to Article 1(1) of the American Convention on Human Rights. Furthermore, it expressed its position on the commission of enforced disappearance in the instant case.³ On the first point, the Ecuadorian State acknowledged partial international responsibility for violating the duty to ensure the necessary guarantees and judicial protection due to its lack of due diligence in the investigation and prosecution of the perpetrators. On the second point, the State argued that the facts did not describe enforced disappearance, but rather contended that it was an "alleged criminal offense" supposedly perpetrated by individuals.⁴ It is worth mentioning that the Ecuadorian State recognized the participation of non-state actors in the events that led to the disappearance of Fredy Núñez Naranjo but not its own responsibility regarding the behavior of such actors.

6. In the judgment, the Court determines part of the facts of the case being that the main line of investigation undertaken by national authorities linked the perpetration of the criminal offense of "kidnapping" ⁵ to the actions of members of the Puñachizag and Shaushi communities. These communities formed part of the Peasant Defense Boards which, according to the determination of the facts of the case, were characterized as follows:

(...) the "Provincial Federation of Peasant Defense Boards of Tungurahua Province," created in that same province in 1966, (...) was created with the purpose of bringing together the Peasant Defense Boards of the province as a form of social organization recognized by Ecuadorian domestic law, whose purpose is to defend the "rights and interests" common to its members. The State did not provide the information requested on the current legal status of peasant defense boards. However, **it has been established that they were active in the Quero Canton and were recognized by the State.**⁶

² Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, paras. 41-45; 88.

³ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 14. "During the public hearing held on February 3, 2023, the State partially acknowledged international responsibility for the violation of the rights enshrined in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument due to the lack of diligence in determining responsibilities for the commission of a criminal offense against Fredy Núñez Naranjo but rejected that the elements of a forced disappearance are present in the case."

⁴ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 22.

⁵ "The crime of kidnapping is committed by taking possession of another person through violence, threats, seduction, or deception, whether to sell them or put them against their will in the service of another, or to obtain any benefit, or to force them to pay a ransom or deliver a movable thing, or to extend, deliver, or sign a document that has or may have legal effects, or to force them to do or refrain from doing something, or to force a third party to perform one of the indicated acts aimed at the release of the kidnapped person." Information provided by the State in its Answering brief.

⁶ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 39.

7. According to the judgement, during the investigations at the domestic level, seven members of the Quero Canton community were preventively detained in relation to the commission of the crime of kidnapping against Mr. Fredy Núñez Naranjo. In response to these arrests, on June 30, 2002, the Central Committee of Peasant Boards of Quero Canton issued a press release requesting the release of the accused parties. The press release states that Mr. Núñez Naranjo was detained in Peasant Boards jail cells as part of the role that these boards have assumed in combating crime in the canton. The press release refers to the relationship between the boards and the police and assumes that the State will respond favorably to the request to release the accused parties to avoid confrontations:

The only crime we have committed is living off our work and one way or another fighting criminals (...) although it is true that the peasants, tired of enduring the abuses, thefts, and murders committed by Fredy Marcelo Núñez Naranjo along with his gang of highway robbers, had taken him to the Peasant Board jail cells (...) certain that you will respond favorably to this request and not have any issues to that effect, because otherwise, the high level of respect we have for the authorities and the Police, we would not want to get into trouble or any confrontation.⁷

On July 31, 2002, the accused parties were released on the grounds that, while there was evidence of a crime, the collective nature of the group of people that perpetrated the criminal behavior prevented the individual participants from being singled out.⁸

8. Likewise, as indicated by the Court in its judgment, the relatives of Fredy Núñez Naranjo received threats from members of the Puñachisag and Shaushi communities who had connections to the Central Committee of Peasant Boards.⁹

9. In examining the merits of the case and addressing the issue of Ecuador's international responsibility for the disappearance of Fredy Núñez Naranjo, the Court characterized the enforced disappearance as a continuous act that is constituted when the following occur concurrently: a) deprivation of liberty; b) the direct intervention of State agents or their acquiescence; and c) the refusal to acknowledge the detention and to reveal the fate or whereabouts of the person in question.¹⁰

10. As it did in its judgment in the *Case of Isaza Uribe et al. v. Colombia*, the Court reiterated its position regarding the attribution of state responsibility

⁷ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 58.

⁸ "On July 31, 2002, the Second Chamber of the Superior Court of Justice of Tungurahua granted the protection of freedom, arguing that, although there were sufficient indications to determine that a public action offense existed, there was a lack of clear and precise indications to prove that the accused parties were the perpetrators or accomplices to the crime, because, in the opinion of the Chamber, the information referred to a group of people, which prevented the individual participants from being singled out. [F15] [F81 evidence]" Cf. Judgement, para. 59.

⁹ "(...) It is also noted that Marcia and Silvia Núñez Naranjo, as well as their respective families, were "threatened with being evicted from their homes were they to report the incident." According to the same report, these threats were allegedly made by "members of the Puñachisag and Shaushi Community, who are led by [RBV], who serves as the President of the Central Peasant Board of Quero Canton." Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 55.

¹⁰ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 83.

when the disappearance occurs while the State occupies the special role of guarantor to the victim:

This Tribunal has also held that, in some cases, the analysis of enforced disappearance based solely on the three elements mentioned may be insufficient or unnecessary. This happens, for example, when the disappearance affects individuals over whom the State has a special position as guarantor, such as that held with respect to individuals deprived of liberty. Thus, in the Case of Isaza Uribe et al. v. Colombia, the Court considered that, just as happens when the State does not provide a satisfactory explanation about the injuries suffered by a person deprived of liberty, **the State's responsibility can also be presumed when the person disappears while under its custody** without it disproving the allegations about state responsibility. Such conclusion arises as a corollary of the State's objective responsibility regarding the life, integrity, and safety of the individuals under its custody.¹¹

In these cases, the State must discover the truth of what happened by fulfilling its obligation to investigate diligently in order to clarify the circumstances and who was responsible for the disappearance.

11. In this case, the Ecuadorian State justified the inevitability of the kidnapping of Mr. Núñez Naranjo contending the existence of "force majeure." This argument was rejected by the Court due to the lack of clarity on how the abduction of Fredy Núñez Naranjo occurred and what actions were taken to prevent it. Specifically, no evidence was provided to demonstrate the "*unforeseen, irresistible, and beyond their control nature of the circumstances that are classified as constituting force majeure.*"¹² Therefore, verifying the disappearance of a victim who was under its custody is, in this case, sufficient to attribute international responsibility to the State.

12. Finally, regarding the duty to investigate and punish those responsible for the enforced disappearance of Mr. Fredy Núñez Naranjo, the Inter-American Court reiterated the following position:

Given that it has been established that Fredy Núñez Naranjo was a victim of enforced disappearance, there is no doubt that the rights provided for in Articles 8(1) and 25(1) of the American Convention, with respect to him and his family, **include not only the investigation of what happened and the punishment of those responsible; but also, the execution of a diligent and immediate search** aimed at establishing the whereabouts of the victim and the consequent guarantee of the right to the truth.¹³

13. The Inter-American Court concluded that the Ecuadorian State was responsible for violating the rights to recognition of juridical personality, to life, to humane treatment, and to personal liberty, in the terms of Articles 3, 4, 5, and 7 in relation to 1(1) of the American Convention, in addition to contravening the obligation not to practice, permit, or tolerate the enforced disappearance of persons in the terms of Article I a) of the Inter-American Convention on enforced disappearance of Persons.

¹¹ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 86.

¹² Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 90.

¹³ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 114.

14. As illustrated *supra*, the judgment of the Inter-American Court attributes responsibility to the State for the enforced disappearance of Mr. Fredy Núñez Naranjo on the grounds that the victim's kidnapping occurred while he was under state custody, that is, it holds the Ecuadorian State accountable in its capacity as guarantor. While we share this perspective, we believe that the judgment should have also examined the State's responsibility in terms of its authorization, support, or acquiescence towards the conduct of non-state actors who are part of the factual framework of the instant case.

15. As a basic principle recognized by the International Community, the international responsibility of the State is primarily generated as a result of acts or omissions by any state power, body, or agent, regardless of their hierarchy, that violate international obligations.¹⁴ As established by the Court in its case law, this principle is applicable to international obligations in the field of human rights.

16. States can also be internationally responsible for acts committed by individuals. As established by the Court in its case law, an illegal act that violates human rights and which is initially not directly attributable to a State "because it is the act of a private person or because the person responsible has not been identified, can lead to the international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."¹⁵ Likewise, the Court has consistently ruled on the direct state responsibility for acts of third parties in cases where private groups act with state recognition or support, in many cases as aid or extension *de facto* of the authority of the Public Force in part of the national territory. Historically, these dynamics have been observed in contexts of armed actors or organized crime operating at various scales in sectors of the national territory with little presence of the police or Armed Forces.¹⁶

17. In the instant case, the main line of investigation on the enforced disappearance of Fredy Núñez Naranjo is related to the actions of the Peasant Defense Boards in Quero Canton. These organizations are governed by the "Statutes of the Provincial Federation of Peasant Defense Boards of Tungurahua," approved on October 10, 1966, by the then interim president of Ecuador, Clemente Yerovi Indabaruru. The document states that the Defense Boards "will concer[n] themselves solely and exclusively with **the defense of private property** reconciled with its social function and the rights and interests of the peasants who form or belong to the different Peasant Boards associated with the Federation."¹⁷ It is worth mentioning that the law authorizes the existence of groups for the defense of private property, with state-granted legitimacy, since the Statute creating the Boards was the result of an Executive Agreement executed by an interim President, which has remained in effect dating back to 1966.

¹⁴ UN General Assembly, Res.56.83 Responsibility of States for Internationally Wrongful Acts, sp (2002), Article 4.

¹⁵ Cf. **Case of the 19 Merchants v. Colombia**. Merits, Reparations, and Costs. Judgment of July 5, 2004. Series C No. 109, paras. 140-141.

¹⁶ Cf. **Case of the 19 Merchants v. Colombia**. *supra* paras. 118 and 124. See also **Case of Isaza Uribe et al. v. Colombia**. Merits, Reparations, and Costs. Judgment of November 20, 2018. Series C No. 363, para. 141.

¹⁷ Art. 2 of the Statutes of the Provincial Federation of the Peasantry Defense Boards of Tungurahua.

18. According to the Merits Report of the Inter-American Commission on Human Rights¹⁸ and the rulings of other international organizations,¹⁹ the Boards were to act as an "*informal justice system*" that ended up leading to allegations of kidnappings, tortures, and homicides. In this regard, it arose from determining the facts in this case that the Peasant Boards went public with their accusation against Fredy Núñez Naranjo as the alleged perpetrator of crimes against private property and the security of the community as justification for his alleged detention.²⁰

19. With regard to the above - as has been done in other cases where state responsibilities for the actions of third parties were determined - the Court should have determined whether Ecuador, through its agents, authorized, consented to, or tolerated practices of organized groups for the defense of their property and that in this case were involved in the removal of Fredy Núñez Naranjo from state custody and his subsequent detention, without any news of his whereabouts since then.

20. In this case, to determine the presence of any of these elements (state authorization, support, or acquiescence), it is possible to adopt the same argument used by the Inter-American Court to dismiss the occurrence of "force majeure" in the invasion of the Quero Canton police station. Indeed, the judgement reaffirms that the State did not provide evidence on how many individuals entered the police station or by what means; whether they were armed; how they threatened or assaulted police officers; what measures were taken by the officers to prevent what happened; nor whether police reinforcements were involved in a pursuit or in specific actions to locate Fredy Núñez Naranjo.²¹

21. Therefore, the authorization of the defense of private ownership, combined with omissions in the face of actions by individuals that led to the victim being taken out of state control, as well as multiple state omissions in terms of

¹⁸ IACHR. Report No. 60/19, Case 12,744 (Merits report), para. 22.

¹⁹ IACHR. Report No. 60/19, Case 12,744 (Merits report), para. 24-26.

²⁰ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 58.

²¹ Cf. *Case of Núñez Naranjo et al. v. Ecuador, supra*, para. 91-92. "Firstly, the unexpected nature of the appearance of that significant number of individuals at the police station has not been proven. Secondly, the State did not explain how the kidnapping occurred. **It was not specified how many individuals entered the police station, how they did it, or how they proceeded to release two community members and detain Fredy Núñez Naranjo.** It has not been proven that **these individuals were armed**, although it can be assumed that the officers were, nor **that they attacked or threatened the police officers** in order for them to release the detainees, nor that they were the community members themselves who extracted them from the cell or cells. On this point, the Court is struck by the oddly identical and excessively succinct nature of the phrases used in the reports and police statements that only refer to the number of community members and the fact that they breached the police station security, although it is not indicated exactly how that was done. Thirdly, the State of Ecuador did not prove any type of action taken by State agents aimed at protecting the persons who were deprived of their liberty under the State's responsibility and in its custody. In fact, the police reports do not even mention that the doors of the police station had been closed upon the arrival of the community members or the reasons why this would not have been possible, nor do they refer to whether there was any type of contact or communication between police officers or community members; nor do they mention the behavior exhibited by the two police officers and the commissioner present at the police station at the time of the incursion by the community members. **There is no evidence that they called for reinforcements or carried out any kind of action that, ultimately,** proved futile or unsuccessful against the determination and number of the community members. It is also not stated that they pursued, requested reinforcements, blocked roads, or attempted to immediately locate Mr. Núñez Naranjo, considering that the mobilization of 400 individuals just 3 kilometers away was easy to track, and that it would have been straightforward to determine the direction in which they were moving. It was the State's responsibility to provide evidence of the indicated facts not only because it was the party claiming force majeure, but also because this information should have been provided by its own agents.

actions aimed at locating the victim in the following hours – something crucial to preventing irreparable violations of the right to humane treatment and life - in addition to the already recognized lack of due diligence in the judicial clarification of circumstances known to the authorities, lead to the presumption of Ecuador's acquiescence to the actions of the Peasant Defense Boards in the disappearance of Fredy Núñez Naranjo.

III. STANDARDS FOR THE DETERMINATION OF INTERNATIONAL RESPONSIBILITY FOR AUTHORIZATION, SUPPORT, AND ACQUIESCENCE IN CASES OF DISAPPEARANCE

22. As previously indicated *supra*, the Inter-American Court has extensively developed its case law in determining state responsibility for authorization, support, or acquiescence in the face of acts by individuals that result in human rights violations, in particular, enforced disappearance. As an additional element for understanding international standards on the matter, it is appropriate to refer to the Statement on non-State actors in the context of the International Convention for the Protection of all Persons from Enforced Disappearance,²² issued by the United Nations Committee on Enforced Disappearance.

23. This Statement formulates an authorized interpretation of the circumstances in which the acts or omissions of persons or groups of persons, who are not agents of the State, can generate state responsibility at the international level. These are circumstances that usually involve "paramilitary groups," "civil patrols," private security companies, criminal organizations, and any person or group of persons - including informal groups or networks - from the moment they received the authorization, support, or acquiescence of a State authority. The Declaration is based on the rules of several relevant international instruments - such as the Statute of the International Criminal Court and the Rules of the International Committee of the Red Cross - as well as on precedents of treaty bodies and special procedures of the UN and on case law of regional human rights courts, including the Inter-American Court.

24. The Statement defines the terms "authorization," "support," and "acquiescence." In accordance with those definitions, "authorization" means that the State, through its agents, has either orally or in writing given permission to persons or groups of persons to commit disappearance; "support" means that the State has provided some assistance to persons or groups of persons who have committed enforced disappearance, *inter alia*, through the sharing of information and/or the provision of means such as infrastructure, funding, weapons, training or logistics. For the purpose of attribution in this context, support does not have to be provided with the specific aim of committing enforced disappearance.

25. "Acquiescence," in turn, means that the State knew, had reasons to know or ought to have known of the commission or of the real and imminent risk of commission of enforced disappearance by persons or groups of persons, but that one of the following applies: (a) The State has either accepted, tolerated or given consent to this situation, even implicitly; (b) The State has deliberately and in full knowledge, by action or omission, failed to take measures to prevent the

²² UN Committee on Enforced Disappearance, "Statement on non-State actors in the context of the International Convention for the Protection of all Persons from Enforced Disappearance" CED/C/10, March 13, 2023.

crime and to investigate and punish the perpetrators; (c) The State has acted in connivance with the perpetrators or with total disregard for the situation of the potential victims, facilitating the actions of the non-State actors who commit the act; or (d) The State has created the conditions that allowed their commission. In such cases, the State has the burden of proving that there was no acquiescence on its part, and it must demonstrate that it has taken concrete measures and action to prevent, investigate and punish the crime, and that such measures have been effective in practice.²³

26. In addition, the Committee recalls that under international law, States have strict obligations with regard to due diligence when they have knowledge of a case of disappearance, or of a real and imminent risk of disappearance, perpetrated by a non-State actor. These due diligence obligations are particularly strict where women or girls are involved, owing to the link that the disappearance may have with, *inter alia*, acts of sexual violence, femicide and trafficking in women.²⁴

27. In these cases, States have the obligation to search for missing individuals in accordance with the Guiding principles for the search for disappeared persons.²⁵ Even though the State may not immediately have the capacity to search for and locate the person – for instance, if the non-State actors alleged to be responsible for the disappearance have control over the territory in which the person was disappeared – the Committee may request the State party to take all reasonable measures, within the scope of their powers, that are necessary to do so, including interim measures, such as the following: registering the case in a specific database; securing mass graves and preserving evidence; collecting relatives' DNA; providing assistance to relatives, including legal and psychological assistance; and taking steps, to the extent possible, to obtain information from the non-State actor as to the fate or whereabouts of the disappeared person.²⁶

VI. CONCLUSION

28. In its determination of State responsibility for the enforced disappearance of the victim, the majority opinion should have addressed the analysis and legal consequences of the authorization, support, or acquiescence of the State in relation to the acts of non-State actors operating under its jurisdiction. Beyond the attribution of international responsibility to the State for failing to fulfill its role as guarantor, the examination of its responsibility for acts of third parties is framed within the factual context of the litigation in the instant case and the elements that arise from the case file point to the state's acquiescence to a declared case of administration of justice and punishments by private parties.

29. The lack of analysis on state responsibility for acquiescence to violations of the American Convention by individuals affects the integrity of the reasoning behind the judgment as to the nature and scope of responsibility for the events that led to the enforced disappearance of Fredy Núñez Naranjo;

²³ *Ibidem*, para. 3-7.

²⁴ *Ibidem*, para. 22.

²⁵ UN Committee against Forced Disappearance, "Guiding principles for the search for disappeared persons" CED/C/7, May 8, 2019.

²⁶ UN Committee on Enforced Disappearance, "Statement on non-State actors in the context of the International Convention for the Protection of all Persons from Enforced Disappearance" CED/C/10, March 13, 2023, para. 24.

accountability for the violation of the right to freedom, humane treatment, life, and access to justice; and in particular, in relation to non-repetition measures.

Verónica Gómez
Judge

Rodrigo Mudrovitsch
Judge

Pablo Saavedra Alessandri
Secretary