



ORGANIZATION OF AMERICAN STATES  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

000138

APPLICATION  
OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS

IN CASE N° 11.385  
KENNETH NEY ANZUALDO CASTRO  
VERSUS THE REPUBLIC OF PERU

DELEGATES:  
PAOLO CAROZZA (COMMISSIONER)  
SANTIAGO A. CANTON (EXECUTIVE SECRETARY)

LEGAL ADVISORS:  
ELIZABETH ABI-MERSHED (DEPUTY EXECUTIVE SECRETARY)  
NORMA COLLEDANI TORANZO (SPECIALIST)  
LILLY CHING SOTO (SPECIALIST)

July 11, 2008  
Washington, D.C.  
1889 F Street, N.W.  
20006

**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
AGAINST THE STATE OF PERU  
CASE N° 11.385  
KENNETH NEY ANZUALDO CASTRO**

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" "the Commission" or the "IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application in case 11.385, Kenneth Ney Anzualdo Castro versus the Republic of Peru (hereinafter "the State" or "the Peruvian State"), stemming from international responsibility for the forced disappearance at the hands of state agents as of December 16, 1993, of student Kenneth Ney Anzualdo Castro— (hereinafter "the victim"<sup>1</sup>)—whose whereabouts remain unknown to date, as do the circumstances of his disappearance—the pain and suffering inflicted upon his next of kin and the subsequent failure to investigate the crimes, prosecute and punish those responsible.

2. Following examination of the available information, the Commission prepared Report on Admissibility and Merits N° 85-07<sup>2</sup>, in accordance with Article 37(3) of the Rules of Procedure, and found the case admissible with regard to the alleged violation of Articles 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") in connection with articles 1(1) and 2 thereof; also with regard to alleged failure to honor commitments undertaken by the State with respect to Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "the Inter-American Convention on Forced Disappearance") in light of the definition provided in Article II thereof.

3. Thus, the IACHR concluded in Report N° 85-07<sup>3</sup> that the Peruvian State violated Kenneth Ney Anzualdo Castro's right to recognition of juridical personality, to life, to humane treatment, to personal liberty, a fair trial and judicial protection, as enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the provisions of Articles 1(1) and 2 of the aforesaid international instrument and Article 1 of the Convention on Forced Disappearance. Furthermore, it concluded that the State is responsible for violation of the right to humane treatment, a fair trial and judicial protection of the victim's next of kin as enshrined in Articles 5, 8 and 25 of the Convention and in connection with the general obligation in Article 1(1) to respect and ensure and the duty to adopt legislative or other measures as set forth in Article 2 of the Convention.

---

<sup>1</sup> As explained in greater detail below, Mr. Kenneth Ney Anzualdo Castro's next of kin are also victims of the violations described in this application. However, the term "victim" shall be used only to refer to Mr. Anzualdo Castro and "victim's next of kin", to refer to his closest family members.

<sup>2</sup> IACHR, Report on Admissibility and Merits N° 85/07, Case 11.385, Kenneth Ney Anzualdo Castro, of October 16, 2007. Appendix 1.

<sup>3</sup> IACHR, Report on Admissibility and Merits N° 85/07, Case 11.385, Kenneth Ney Anzualdo Castro, of October 16, 2007. Appendix 1.

4. The case has been processed in accordance with the Convention and is submitted to the Court pursuant to Article 33 of the Rules of Procedure. Accordingly, the Commission adopted Report N° 85/07 on October 16, 2007, a copy of which is attached to this application, as an annex, and transmitted it to the State on November 13, 2007, which was given a two-month period to adopt the recommendations contained therein. The time period, which was extended several times,<sup>4</sup> lapsed without the State satisfactorily complying with the relevant recommendations. In light of the foregoing, the IACHR decided to refer the case to the Court for it to uphold its findings on the facts and the law and ascribe international responsibility to the Peruvian State for breaching its obligations as set forth in Report N° 85/07.

5. Referral of the case to the Court is predicated upon the need to conduct a diligent investigation in order to ascertain the truth and obtain justice and reparation for the harm caused by the violations perpetrated against the victim and his next of kin (hereafter "the injured party"). The forced disappearance of Mr. Kenneth Ney Anzualdo Castro is an on-going violation of a great many of his essential non-derogable rights, which has continued to date. Moreover, failure to learn the truth and prosecute the perpetrators of the crimes in the instant case has contributed to the continuing pain and suffering caused by the violation of the fundamental rights of the injured party, despite the State's duty to provide an adequate judicial response whereby the identity of those responsible for the forced disappearance of the victim is established. Furthermore, the Commission finds that the case is a reflection of a series of issues which, as of 1992, emerged in the general context of a breakdown of the institutional order in Peru, were of a public nature, became well-known and to which the Inter-American Commission has called attention since the 1990's.<sup>5</sup>

## II. OBJECT OF THE APPLICATION

6. The object of this application is to request that the Court find and declare that, as a result of the events in the instant case, the Peruvian State is responsible for violation of Mr. Kenneth Ney Anzualdo Castro's right to recognition of juridical personality, life, humane treatment, personal liberty, a fair trial, and judicial protection, as enshrined in Articles 3, 4, 5, 7, 8 and 25, respectively, of the American Convention, in connection with Articles 1(1) and 2 of the aforesaid international instrument and of violation of Article 1 of the Convention on Forced Disappearance.

7. Additionally, the IACHR requests that the Court find and declare the State of Peru responsible for violation of the right of the victim's next of kin to humane treatment, a fair trial and judicial protection, as enshrined in Articles 5, 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of the aforesaid international instrument.

8. Consequently, the Inter-American Commission requests that the Court order the State to:

<sup>4</sup> At the appropriate times, the Commission granted extensions requested by the State with "the understanding that such extension temporarily suspends computation of the 90 days provided in Article 51(1) of the American Convention" and because of waiving its right to file preliminary objections pertaining to the time period mentioned above.

<sup>5</sup> See for example: IACHR, *Report on the Human Rights Situation in Peru*, March 12, 1993. OAS/Ser.L/V/II.83, Doc. 31, par. 1, at Web Site: <http://www.cidh.org/countryrep/Peru93sp/indice.htm>.

- a. Acknowledge its international responsibility for the violations alleged in case 11.385, Kenneth Ney Anzualdo Castro v. Peru, in a public statement of apology to the victim and his next of kin, in consultation with the latter, to make sure his memory is preserved.
- b. Conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify and punish all persons responsible for planning and carrying out the acts connected with the abduction and forced disappearance of Kenneth Ney Anzualdo Castro.
- c. Adopt all necessary measures to investigate, identify and disclose the whereabouts of Mr. Kenneth Ney Anzualdo, or the location of his remains, as the case may be. If possible, the State shall deliver the remains of the victim to his next of kin and, if impossible, it should provide corroborated and convincing information on his whereabouts.
- d. Adopt all measures necessary to adequately provide reparation and alleviation for the harm inflicted upon the victim's next of kin, covering both moral and material damages.
- e. Cover legal fees and expenses defrayed by the victim's next of kin and their representatives in processing this case in domestic courts, as well as any arising from processing the case in the Inter-American system.

### **III. REPRESENTATION**

9. As provided by Articles 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissione rPaolo Carozza and Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Attorneys Elizabeth Abi-Mershed, Assistant Executive Secretary, and Norma Colledani Toranzo and Lilly Ching Soto, Specialists of the Executive Secretariat of the IACHR, have been appointed to act as legal advisors.

### **IV. JURISDICTION OF THE COURT**

10. Pursuant to Article 62(3) of the American Convention, the Inter-American Court is competent to hear any case relating to the interpretation and application of the provisions of the Convention that may be submitted to it, provided that the States that are parties to the case have or do recognize the jurisdiction of the Court.

11. The State ratified the American Convention on July 28, 1978, accepted the contentious jurisdiction of the Court on January 21, 1981 and ratified the Convention on Forced Disappearance on February 13, 2002. The application before the Court involves the victim's forced disappearance as of December of 1993; and the consequences thereof and failure to investigate have continued to date. Therefore, the Court has jurisdiction to hear the instant case.

## V. PROCESSING OF THE CASE BY THE INTER-AMERICAN COMMISSION

12. The original petition, dated April 13, 1994, was received on May 27, 1994. On September 27, 1994, pursuant to the Rules of Procedure then in force, a copy of the petition was transmitted to the State granting it a period of 90 days to submit such comments as it deemed appropriate. In response, the State presented its reply in Brief No 078-94-JUS/CNDH-D, received on November 16, 1994, a copy of which was accordingly relayed to the petitioners, who were given a period of 45 days to submit such comments as they considered relevant.

13. The State submitted additional information regarding the case in communications dated February 9 and May 30, 1995. In the latter communication, the State enclosed a copy of Official Letter N° 4285-MD-J from Peru's Ministry of Defense dated May 8, 1995.

14. On May 15, 1997, the petitioners submitted their observations on the State's arguments. The IACHR transmitted the pertinent portions of the aforesaid communication to the State, requesting that it provide such comments as it deemed relevant. The Peruvian State filed its observations on July 1, 1997 in Brief 970-97-JUS/CNDH-SE.

15. The State forwarded supplemental information on the case in a communication received by the Executive Secretariat of the IACHR on August 5, 1997. The Commission relayed the relevant portions of the communication to the petitioners on August 11, 1997 granting them a period of 30 days to submit their comments.

16. On September 19, 1997, the State requested that the IACHR hold a hearing on this case and nine other cases involving similar events during the latter's 97th Regular Session. The Commission informed the State in a letter on September 22, 1997 that it would not be possible to grant such a request at that time.

17. The petitioners supplied additional information on the case in a communication dated September 29, 1997. The Commission conveyed the relevant portions of said letter to the State on October 24, 1997 and requested such comments as it considered necessary within a period of sixty days. The State submitted its comments in a communication of December 23, 1997, and the Commission proceeded to forward the relevant portions to the petitioners in a communication dated January 13, 1998, granting them a period of 45 days to submit observations.

18. On February 2, 1998, the State requested a private hearing with the IACHR to address strictly procedural matters of the case. In its response of February 3, 1998, the Commission granted a hearing to be held on February 25, 1998, during the 98th Regular Session, and invited both parties to attend.

19. In a communication dated February 10, 1998, the petitioners officially entered the appearance of the Center for Justice and International Law (CEJIL) as accredited co-petitioner in the case. In a letter dated February 25, 1998, the Commission

acknowledged receipt of the communication and duly proceeded to enter CEJIL into the record as co-petitioner.

20. Furthermore, in a communication dated February 11, 1998, sent to the Executive Secretariat of the IACHR on February 20, 1998, the petitioners furnished additional observations on the case in response to the prior communication that had been sent to them by the IACHR on January 13.

21. On February 25, the IACHR held a hearing on the instant case with both parties present. In a communication of March 2, 1998, the State submitted a written summary of the information conveyed to the Commission at the hearing held on February 25, 1998, receipt of which was confirmed in a letter April 13, 1998.

22. In a letter dated May 26, 1999, the Commission requested that the petitioners and the State provide updated information on the case and placed itself at the disposal of the parties to try to reach a friendly settlement in the matter pursuant to Article 48(1)(f) of the American Convention on Human Rights.

23. In a letter received by the IACHR on June 25, 1999, the State requested an extension of the deadline to submit the information requested of it. The Commission then granted an extension of 30 days in a letter dated June 30, 1999. The State submitted the information requested On July 27, 1999, additionally stating that it stood by its position that the case was inadmissible and, consequently, it was not appropriate to initiate a friendly settlement procedure. In a communication dated September 1, 1999, the IACHR proceeded to forward the relevant portions of said observations to the petitioners and granted them 30 days to submit any observations they deemed appropriate on the information provided by the State, as well as to forward any new or supplemental information that might be relevant.

24. In a note dated January 17, 2001, the petitioners requested a hearing during the 110th Regular Session to discuss the possibility of reaching a friendly settlement with the State. In a response on January 31, 2001, the IACHR granted a hearing to be held on March 2, 2001.

25. On January 7, 2003, the IACHR wrote to the petitioners to request additional information on the case at hand. Subsequently, on May 19, 2004, the Commission—pursuant to Article 37(3) of the Rules of Procedure—decided to open a case under the number 11.385 on the complaint of the petitioners, and postpone its treatment of admissibility until the discussion and decision on merits. At that same time, in accordance with Article 38(1), it also requested that the parties submit additional observations on the merits within two months from the date of transmission of said letter.

26. In a communication dated July 22, 2004, APRODEH furnished additional information on the case, the pertinent portions of which were duly forwarded. For its part, the State requested an extension for submission of its observations in a letter from July 23, 2004. In its response, on August 30, 2004, the Commission granted the extension requested by the Government for submission of its additional observations on the merits. In a communication October 4, 2004, the State submitted Brief No. 62-2004-JUS/CNDH-

SE, prepared by the Executive Secretariat of the National Council for Human Rights [*Consejo Nacional de Derechos Humanos*]. On November 11, 2004, the Commission forwarded the relevant portions of the brief to the petitioners.

27. In a communication dated January 31, 2005, sent to the Executive Secretariat of the IACHR on February 10, 2005, APRODEH submitted its comments on the information provided by the Peruvian State.

28. On April 26, 2007, the Commission requested the petitioners and the State to furnish updated information on the case and granted both parties 30 days to do so. In communications received on May 18, 2007 and June 5 of that year, the petitioners submitted additional information on the case *sub lite*, the relevant portions of which the Commission then passed on to the State in a communication dated June 7, 2007. For its part, the State requested an extension for the submission of its observations on May 31, 2007. On June 7, 2007, the IACHR granted the State an extension of 15 days and asked it to submit additional evidence within the same period. On July 20, 2007, the State submitted additional information on the procedural status of the domestic judicial proceeding, which was attached to the record in the possession of the Commission and brought to the attention of the petitioners.

29. On October 16, 2007, during the 130th Regular Session of the Inter-American Commission, Report N° 85/07 on admissibility and the merits was approved. In said report, the IACHR concluded that it had jurisdiction to hear the case and declared the petition admissible pursuant to Articles 46 and 47 of the Convention. Additionally, it concluded that the State violated Kenneth Ney Anzualdo Castro's right to recognition of juridical personality, life, humane treatment, personal liberty, fair trial, and judicial protection, as enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of the aforesaid international instrument and Article I of the Convention on Forced Disappearance. It further concluded that the State is responsible for violation of the victim's first of kin's right to humane treatment, fair trial and judicial protection, as enshrined in Articles 5, 8 and 25 of the Convention and in connection with the general obligation to respect and ensure in Article 1(1) and the duty to adopt domestic measures set forth in Article 2, of the Convention.

30. Based on the analysis and conclusions of the report, the Inter-American Commission issued the following recommendations to the State:

1. Acknowledge its international responsibility for the violations alleged in case 11.385, Kenneth Ney Anzualdo Castro and issue a statement of public apology to the victim and his next of kin, in consultation with the latter, to preserve his memory.
2. Carry out a thorough, impartial, effective and prompt investigation of the facts in order to identify and punish all persons responsible for planning and executing the acts connected with the abduction and forced disappearance of Kenneth Ney Anzualdo Castro.
3. Adopt all means necessary to investigate, identify and disclose the whereabouts of Mr. Kenneth Ney Anzualdo, or the location of his remains, as the case may be. If possible, the State shall deliver the remains of the victim to his next of kin and, if

impossible, it should provide corroborated and convincing information concerning the whereabouts.

4. Adopt all measures necessary to adequately redress and alleviate injury inflicted upon the victim's next of kin, including that of a psychological or emotional nature (moral damage) as well as of a pecuniary nature (material damage).

31. The Inter-American Commission transmitted Report 85/07 to the State on November 13, 2007 and set a deadline of two months for it to report on the measures it had adopted to fulfill said recommendations. At the same time, it forwarded the relevant portions of the report to the injured parties and, as provided in Article 43(3) of the Rules of Procedure, requested them to present their position regarding the possibility of the case being submitted to the Inter-American Court. In a letter dated December 13, 2007, the representatives of the injured parties expressed their interest in the case being referred to the Court.

32. On January 11, 2008, as the deadline that had been granted expired, the State requested an extension for presenting the requested information and the motion was granted for an additional seven days. On February 1, 2008, the State filed another motion for extension for an additional period of 90 days. In a letter dated February 8 of that same year, the Commission informed the State it was granting an extension of three months. In addition to granting the aforesaid extension, the IACHR requested the State to furnish in advance information regarding fulfillment of the recommendations in the form of briefs to be filed on March 25 and April 25, 2008.

33. As a follow-up to this letter, the State submitted in March and April of 2008, two briefs concerning fulfillment of the recommendations set forth in Report 85/07. Additionally, on May 8, 2008, the State filed another motion for an extension of two months to provide information regarding fulfillment of recommendations with the "understanding that that time period temporarily suspends the computation of the 90 days set forth in Article 51(1) of the American Convention."

34. On May 12, 2008, the IACHR granted the new extension for fulfillment of recommendations. In letters from May 19 and June 26, 2008, the State submitted information on the case. Viewing these letters in light of the deadline set for fulfillment of the IACHR's recommendations, it is the finding of the Commission that the time period has expired without the State presenting any information that would denote satisfactory fulfillment of the recommendations, and on July 10, 2008, the Commission decided to submit the instant case to the jurisdiction of the Inter-American Court, in accordance with articles 51(1) of the Convention and the Rules of Procedure.

## VI. FACTS

1. **Extrajudicial execution and forced disappearance as systematic and widespread practices in Peru during the period in which the events of the case took place**



35. The forced disappearance of young Kenneth Ney Anzualdo took place in the context of a pattern of human rights violations. Furthermore, as the Inter-American Commission<sup>6</sup>, the Truth and Reconciliation Commission (hereinafter the "CVR")<sup>7</sup> and the Inter-American Court of Human Rights<sup>8</sup> have established, around the time of the events of the case, a pattern of extrajudicial executions, forced disappearances and massacres attributed to State agents and groups linked to public security agencies was taking place in Peru.

36. Specifically, the Commission noted that at or around the time of the events of the case, right to life violations, including forced disappearance, were often preceded by cruel, inhuman and degrading punishment, usually intended to extract self-incriminating confessions from victims from whom information on subversive groups could be obtained, or in order to sow fear among the population to discourage cooperation with these groups.<sup>9</sup>

37. Additionally, the IACHR indicated that violations of the right to humane treatment stemming from that behavior gave rise, in a great many cases, to the death of the victim or led to resorting to elimination of people who were witnesses to such acts.<sup>10</sup> This was in addition to an absence of formal procedures for State agents to conduct arrests.<sup>11</sup> Moreover, in many instances the affected party was not informed of the charges against him or her; nor would the arresting officers provide any identification; he or she would not be told where they were being taken nor informed of his or her rights. Many of these arrests would take place in isolated locations and would often affect groups of persons.<sup>12</sup>

38. On this topic, the Commission specifically noted that the absence of formal procedures for conducting arrests bore a direct relationship to the forced disappearance of persons, inasmuch as it constitutes the first step of this phenomenon. Concretely, since the time of the IACHR's visit to Peru in 1989, it expressed its serious concern about the lack of formal procedures when State agents conducted arrests. According to the complaints and testimony that were received, a great number of cases of arrests would indeed be carried out without initially advising the affected person of the charges against him or her, without the person knowing the identity of the arresting officer, without any

<sup>6</sup> IACHR, report on the Human Rights Situation in Peru OAS/Ser.L/V/II.83, Doc. 31, March 12, 1993, pars. 16 et seq; IACHR, Report N° 51/99, Cases 10.471 Anetro Castillo Pezo et al, Peru, April 13, 1999, pars. 68-75; IACHR, Report N° 52/99, Cases 10.544 Raúl Zevallos Loayza et al, Peru, April 13, 1999, pars. 45-52; IACHR, Report N° 53/99, Cases 10.551, David Palomino Morales et al, Peru, April 13, 1999, pars. 70-77; IACHR, Report N° 54/99, Cases 10.807, William León Laurente et al, Peru, April 13, 1999, pars. 68-75; IACHR, Report N° 55/99, Cases 10.815 Juan De La Cruz Núñez Santana et al, Peru, April 13, 1999, pars. 62-69; IACHR, Report N° 56/99, Cases 10.824 Eudalio Lorenzo Manrique et al, Peru, April 13, 1999, pars. 61-68; IACHR, Report No. 57/99, Cases 10.827 Romer Morales Zegarra et al, Peru, April 13, 1999, pars. 28-35; IACHR, Report No. 101/01, Case 10.247 et al, Extrajudicial Executions and Forced Disappearances of Persons, Peru, October 11, 2001, pars. 172-179. All of these reports are available at: <http://www.cidh.oas.org/annual.esp.htm>.

<sup>7</sup> Truth and Reconciliation Commission, Final Report, Lima: CVR, 2003, Volume VI, Chapter 1.2. Forced Disappearances, pg. 57, available at: <http://www.cverdad.org.pe/ifinal/index.php>; Also see Chapter 1.3. Extrajudicial Executions, pg. 179.

<sup>8</sup> I/A Court H.R., *Gómez Palomino Case*. Judgment November 22 2005. Series C No. 136, pars. 54.1 – 54.4.

<sup>9</sup> IACHR, *Report on the Human Rights Situation in Peru*, March 12, 1993, pars. 18 et seq.

<sup>10</sup> *Idem*.

<sup>11</sup> *Idem*.

<sup>12</sup> *Idem*.

indication of where the person under arrest was being taken to, and without the affected party being informed of his or her rights.<sup>13</sup>

39. In that same vein, the IACHR reiterates that right to humane treatment violations are of great consequence, given that when effective measures are taken to protect such a right, it constitutes an area in which violations of other rights can be prevented.<sup>14</sup> The Commission, in turn, acknowledged a pattern of impunity in the investigation and prosecution of the cases of forced disappearances of these persons.<sup>15</sup>

40. Additionally, it is fitting to add that case law of the Court noted that the victims of forced disappearances were usually persons identified by law enforcement officers, military forces or paramilitary commandos as alleged Shining Path or *Tupac Amaru* Revolutionary Movement (Movimiento Revolucionario Tupac Amaru) members, collaborators or sympathizers.<sup>16</sup> The Court further stated that since the April 5, 1992 coup d'état, implementation of this practice became heightened and coincided with an absence of simple and expeditious judicial recourse such as habeas corpus, thus creating a climate that was incompatible with effective protection of the right to life and other human rights in the country.<sup>17</sup>

41. Furthermore, it was established that forced disappearance was a complex practice involving several different acts or stages carried out by different groups of persons. In many cases physical elimination and concealment of the remains would take place. In this regard, it was found specifically that forced disappearance could be characterized as having the following stages, which do not necessarily have to occur in this same order: selection of the victim, arrest of the individual, holding the victim at a detention site, possible transfer to another detention center, interrogation, torture and processing of the information obtained. In many instances, the decision to eliminate the victim and conceal the remains would follow. In order to destroy evidence of the crime, the bodies of executed victims were incinerated, mutilated, dumped in inaccessible or isolated areas, buried or spread out in different locations.<sup>18</sup>

42. In these cases, the findings of fact in legal precedents of the system established concretely that the arrests of the victims were conducted in a violent manner, usually at their domicile, in public places or in public entities, through raids perpetrated by hooded and armed persons, in sufficient number to overcome any resistance.<sup>19</sup> Throughout the entire process, the common denominator would have been denial of the very fact of the arrest and the withholding of any information whatsoever about what was happening to the person under arrest, and consequently the person would be entering an

<sup>13</sup> IACHR, *Report on the Human Rights Situation in Peru*, OAS/Ser.L/V/II.83, Doc. 31, March 12, 1993, I. Background C. Human Rights Problems Identified by the Commission. C. Right to personal liberty, pars. 20 & 21.

<sup>14</sup> *Idem*.

<sup>15</sup> IACHR, *Report on the Human Rights Situation in Peru*, Washington D.C., March 12, 1993, par. 90.

<sup>16</sup> I/A Court H.R., *Gómez Palomino Case*. Judgment November 22, 2005. Series C No. 136, par. 54.1. Also see IACHR. Application in the Case of Santiago Fortunato Gómez Palomino. (Case 11.062) versus the Republic of Peru. Washington D.C., September 13, 2004. par. 27.

<sup>17</sup> *Idem*.

<sup>18</sup> *Idem*.

<sup>19</sup> IACHR, Application to the Inter-American Court of Human Rights in the La Cantuta Case (Case 11.045) versus the Republic of Peru, Washington D.C., February 14, 2006, par. 74.

established circuit of clandestine detention, from which he or she would be very lucky to get out alive.<sup>20</sup>

43. With regard to the methods used to destroy proof of crimes committed during forced disappearance, the IACHR deems it necessary to cite the CVR, which notes in its report that the methods included, but were not limited to, mutilation or incineration of remains.<sup>21</sup> In this regard, it can be gathered from available evidence that there existed clandestine detention centers, which were set up during the 1990's in the basement of the Army's Intelligence Service, widely known as "*el Pentagonito*" ('the Little Pentagon'), where incinerators were installed in order to "consummate" the disappearances of persons detained in a clandestine manner at that state office.<sup>22</sup>

44. Lastly, it must be mentioned that on June 14, 1995, the Congress of the Republic of Peru enacted Law N° 26.479, which took effect on June 15, 1995. The aforesaid law granted amnesty to members of the public security forces and civilians who had been the subject of complaints, investigations, proceedings or convictions, or who were serving prison sentences for violations of human rights committed between 1980 and 1995. Days later, the Peruvian Congress approved a second amnesty, Law 26.492, which, *inter alia*, precluded judges from passing judgment on the legality or applicability of the first amnesty law.<sup>23</sup>

## 2. The Forced Disappearance of Kenneth Ney Anzualdo Castro

45. Mr. Kenneth Ney Anzualdo Castro was born on June 13, 1968. At the time of his disappearance his family was made up of his father, Felix Vicente Anzualdo Vicuña; his mother, Iris Isabel Castro Cachay de Anzualdo –deceased October 26, 2006–; and siblings Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro. At the time of his disappearance he was 25 years old and was a student of Economics at the Universidad Técnica del Callao.

46. According to the evidence in the record before the Commission, on December 16, 1993, the victim left his home for the *Universidad del Callao*, where he remained until approximately 20:45 hours. Upon leaving the university, he caught the number 19-B bus, with license plate number IU 3738, in order to go home. As he boarded said bus, Kenneth Anzualdo's classmates Milagros Olivares Huapaya, Jimmy Torres and Luz Suárez Huallpa said goodbye to him. Regarding this event, we must cite the statements provided by Kenneth Anzualdo's father, Mr. Felix Anzualdo Vicuña, who specifically said:

<sup>20</sup> *Idem*.

<sup>21</sup> Truth and Reconciliation Commission, *Final Report*, Lima: CVR, 2003, Volume VI, 1.2. "Forced Disappearance of Persons by Agents of the State," 1.2.10 "Conclusions" ['Conclusions'], p. 115.

<sup>22</sup> Supreme Court of Justice of the Republic, First Transitory Chamber of the Supreme Court, Extradition Case File, No 02-2006, Amendment of Extradition Request, June 21, 2006, Lima.

<sup>23</sup> I/A Court H.R., *Gómez Palomino Case*. Judgment November 22, 2005. Series C No. 136, par. 54.7. Also see I/A Court H.R., *Barrios Altos Case*. Judgment March 14, 2001. Series C No. 75, par. 2, and I/A Court H.R., *Barrios Altos Case*. Interpretation of the Judgment on the Merits (Art. 67 American Convention on Human Rights). Judgment September 3, 2001. Series C No. 83, pars. 41 to 44.

That day he left my house, to head to the university where he stayed until 8:45; that is, it was four o'clock in the afternoon when he left my house. At 8:45, in the company by several other students, who saw him leave, he came toward Avenida Santa Rosa in the company of Milagros Olivera Sualpa, Jimmy Torres, Luz Suárez Hualpa, who saw him get on a number 19-B bus, with license plate number IU 3738, driven by Agustín Cristóbal Alvarado Santos.<sup>24</sup>

47. Consistent with the above-cited testimony, the June 3, 1994 decision ordering closure of the criminal case filed with the Office of the Fifth Provincial Prosecutor of Callao, and which included the statements of next of kin and classmates of Kenneth Anzualdo, found that:

The statements of Marly Arleny Anzualdo Castro, Felix Vicente Anzualdo Vicuña, Milagros Juana Olivares Huapaya, Yheimi Torres Tuanama and Rubén Darío Trujillo Mejía; the first two of these individuals being next of kin of missing person Kenneth Anzualdo Castro; the next two persons listed, his classmates at the School of Economic Sciences of the *Universidad Nacional del Callao*; and the last person listed, a member of the Human Rights Association; from whom it is established that: the above-cited missing person was last seen on December 16 of 1993, at approximately 8:30 PM by the above-listed classmates, in the circumstances of leaving the aforementioned university and who observed the missing person board a number 19 public bus line, belonging to the company Transportes Cahuide Sociedad Anónima (...).<sup>25</sup>

48. The evidence shows that an automobile intercepted the bus, which young Kenneth Anzualdo Castro had boarded to return to his residence the night of December 16, 1993. Three persons dressed in plain clothes got out of the automobile they were riding in, after intercepting and stopping the bus, and got onto the bus where they identified themselves as members of the Police Department. Next, they ordered the passengers on the public transportation vehicle—Kenneth Anzualdo and two others—to get off the bus and forced the alleged victim to get into the vehicle in which they were riding. In his testimony to the CVR, Felix Anzualdo Vicuña stated:

When he did not come home we made inquiries. We personally made inquiries. Then, we tried to find out from where? Who was with him at the university? And they told us he left at such and such a time. Based on that we just had to wait all day for the bus to come. Then we found out there were two cases, one on Avenida Mexico and the other on Avenida Santa Rosa. The one on Mexico, they got on, they stopped the bus and two policemen got on to ask for documents. However, with the one on Santa Rosa the bus was intercepted. So the bus driver plainly told us that a student had indeed gotten on in front of the university, one bus stop further on, a couple of sweethearts got on. They came at that time; the interception took place on Avenida Santa Rosa, just before turning onto Avenida La Paz. A light blue automobile cuts them off; three individuals got out and identified themselves as police officers but were dressed in plain clothes and looked like the military type. They got onto the bus, they took the three passengers off who were there and they made one of them get into the automobile. And then they set off in an unknown direction.<sup>26</sup>

49. It is proven fact that December 16, 1993 was the last day that young Kenneth Ney Anzualdo Castro was seen alive and since that date his family has not heard

<sup>24</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at: [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

<sup>25</sup> Office of Attorney General, Office of the Fifth Provincial Prosecutor of Callao, Decision to close investigation, dated June 3, 1994.

<sup>26</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at: [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

anything about him again and his whereabouts are unknown. In a verbatim statement below, the victim's father described the initial reaction of the family upon learning of his disappearance:

After he didn't come home that night we were worried because he was so responsible: if he went off with his friends he'd always telephone us. He would say, "Well, Dad, I'm going to stay the night. I'm at so-and-so's house. I'll come home early tomorrow because it's a bit late and you never know what might happen." "Great." I'd give him permission and that was that. So we thought maybe he would be home the following day. I imagined that was what had happened. So we thought that he would be back by six or seven in the morning at the latest. When he hadn't arrived by 10, 11, 12, we became anxious. What has happened? We started to make inquiries. The first thing we did was to look for him.<sup>27</sup>

50. The evidence shows that among other steps and actions that the Anzualdo Castro family took, they talked to the driver of the bus that Kenneth Anzualdo boarded on the night of December 16, 1993. They also pursued inquiries with various government institutions, including the National Police, DINCOTE [National Office Against Terrorism], and the morgue. Additionally, they spoke to members of the Association for Human Rights (APRODEH) and the family of Martín Roca Casas, another student who had disappeared shortly before Kenneth Anzualdo. The record of testimony No. 100079 to the CVR states precisely that in their search for young Mr. Anzualdo, his family went to the terminus of the number 19 bus line in the district of Santa Anita and asked for a list of the vehicles that left between 8 and 9 p.m. at night. Of the four drivers they spoke to, two said that the police had conducted a "round-up" on the last night that Mr. Anzualdo was seen alive, and one of them, Mr. Alvarado Cristóbal, said that he had been afraid because a car was following them, that three individuals dressed in civilian clothes got on the bus, that they looked military, and that they had threatened them with firearms. He noted that the incident took place on the corner of Santa Rosa and La Paz avenues, that they threatened him, and that the only passengers in the vehicle he was driving were a young man and a couple of sweethearts.<sup>28</sup>

51. Furthermore, in said record of the testimony of Kenneth Anzualdo's father, it mentions:

The bus had left Callao at 8:45PM, more or less the time Kenneth had left the university. The bus was intercepted near Kenneth's home. Kenneth had not gone to buy T-shirts that day, he didn't have enough time. The testimony of the bus driver was taken eight days after the disappearance.

[...]

The family organized themselves to take the search to every possible public agency, everyone from the Police Station to the Morgue. Their search at DINCOTE left them empty handed. They filed a motion with a judge for a writ of habeas corpus to no avail. They went to the Office of the Harbor master of Callao, where Kenneth's father spoke with Captain Vallesteros,

<sup>27</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at: [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

<sup>28</sup> Truth and Reconciliation Commission, Record of Testimony N° 100079, provided by Felix Vicente Anzualdo Vicuña.

who advised him to report the incident to the Human Rights Institutions and gave him the address of APRODEH.<sup>29</sup>"

52. As to verification of the forced disappearance of Kenneth Anzualdo, the list of victims named in the report of the CVR includes Kenneth Ney Anzualdo Castro, aged 25 (at the time of his disappearance), and it specifically says that the disappearance is thought to have occurred in December 1993 in the Department of Callao.<sup>30</sup>

53. With regard to the involvement of State agents in the abduction and forced disappearance of Kenneth Ney Anzualdo Castro, the record before the Commission contains the testimony given at the Office of the Fifth Provincial Prosecutor of Callao by Mr. Cristóbal Alvarado, the driver of the bus that Kenneth Anzualdo boarded on the night of the incident. In that proceeding, the bus driver said that the police as well as the armed forces conducted round-ups on a daily basis in the area.<sup>31</sup> Furthermore, in his testimony, when asked if he knew Marly Arlene Anzualdo Castro –Kenneth Anzualdo's sister- and if he recognized her as the person who a short time after the incident had asked him if his vehicle had been stopped on the night of the incident, December 16, 1993, he indicated:

That, yes, [I do] recognize the person you are showing me as the person who approached me to ask whether I had been stopped in my Vehicle on the day in question, to which I answered that there had been a round-up but I couldn't say exactly how many policemen boarded [my] vehicle and made several passengers get out [...]<sup>32</sup>.

54. For his part, José Antonio Melgar Arias, a fellow student of Kenneth Anzualdo, said in his testimony to the CVR that between November and December 1993 two classmates of his at the University of Callao, Kenneth Ney Anzualdo Castro and Martín Roca Casas [...] were "disappeared" on different days by military personnel who belonged to DINCOTE, the army, and/or the navy."<sup>33</sup>

55. The evidence attached suggests that, in the specific case of Kenneth Ney Anzualdo Castro, his forced disappearance was perpetrated by members of the Army Intelligence Service (SIE), according to information and testimony collected by a journalist and published in the book *Muerte en el Pentagonito: Los cementerios del Ejército Peruano*, which contains a description of the abduction, killing, and possible disappearance of Kenneth Ney Anzualdo Castro. On this point, the relevant passages of the aforesaid book read as follows:

The Anzualdo operation was Jesus Sosa's last job at the factory. Actually he was not supposed to be in charge of the abduction, but instead it was to be Captain Velarde's job. He was inexperienced, and Commander Sanchez Valdivia wanted him to gain experience in leading an operation. But the team waited for the student for three nights and did not make a move. On two occasions, circumstances weren't right, according to Velarde, and on another

<sup>29</sup> Truth and Reconciliation Commission, Record of testimony N° 100079, provided by Felix Vicente Anzualdo Vicuña.

<sup>30</sup> Information available on the Web site of the CVR (see <http://www.cverdad.org.pe/desaparecidos/desaparecidos.php>).

<sup>31</sup> Office of the Fifth Provincial Prosecutor of Callao, Statement of Santiago Cristóbal Alvarado Santos, January 14, 1994.

<sup>32</sup> Office of the Fifth Provincial Prosecutor, statement of Santiago Cristóbal Alvarado Santos, January 14, 1994.

<sup>33</sup> CVR, Record of Testimony N° 700418, given by José Antonio Melgar Arias, October 21, 2002.

opportunity they messed it up when they were tailing the number 19 bus; they thought Anzualdo had gotten on when he had actually crossed the street.

On the fourth day the chief of the PIL [intelligence post] himself went to inspect the work of the captain's team, to which he had assigned Jesus Sosa. He wanted immediate action and made a change of plans. He ordered the agent to direct the abduction. It is hard to tell whether Velarde was annoyed or relieved. The Captain was to drive the car during the operation.

The abduction was not complicated. On the days they remained on stand-by, one of *Chito Rios'* informants called the SIE from inside the University, to let them know when Roca arrived, and then the teams would set off to Avenida Santa Rosa to wait. When he was given the assignment, Jesus Sosa only made a partial change to the way they had decided to proceed, which involved following Anzualdo until he got off at his bus stop, which is when they would pick him up. The idea of passing themselves off as police officers came to him in the field. He knew that the Captain would be following the bus in the Volkswagen and, in fact, the car could catch up once they were on the street.

[...]

As for Anzualdo, he did not stay alive for very long at *El Pentagonito*. In Jesus Sosa's mind, the issue of abducting him went right out of his head four days after he was brought to the basement of the SIE2. He would remember the date: December 20.<sup>34</sup>

56. Evidence consistent with the book passages reproduced above can be found in the record: the extradition application presented to Chilean judicial authorities for the accused Alberto Fujimori, in connection with the forced disappearance of Kenneth Ney Anzualdo Castro and others, expressly mentions the existence of clandestine detention centers which were constructed in the basements of the Army Intelligence Service facility, better known as *El Pentagonito*, where incinerators were installed in order to consummate the disappearances of persons detained in a clandestine manner at that State agency.<sup>35</sup> Said document states the following:

It is believed that the extraditatus Alberto Fujimori or Kenya Fujimori, as President of the Republic of Peru, knew of and played a part in the murder of various persons who were detained by members of the Army Intelligence Service, where they were tortured, killed, and their bodies then cremated in an incinerator in the basement of that facility. These events, which occurred in 1990 and over years that followed, included as victims of the crime of forced disappearance Kenneth Ney Anzualdo Castro, Martín Javier Roca Casas, and Justiniano Najarro Rua. Accordingly, in this regard, documentary evidence has been collected from which it is reasonable to infer the criminality of the suspected commission of the aforesaid crime, which is evidence of the existence of an institutionalized mechanism within the State, by which persons presumed to be members of terrorist groups were illegally detained, tortured, and made to disappear. The foregoing was carried out through the Army National Intelligence Service (SIE), of which the accused Head of State must have been fully aware, as was his Presidential Adviser and Adviser to the National Intelligence Service, Vladimiro Montesinos Torres, who periodically visited the facilities in the basement of the SIE, as several witnesses have confirmed.<sup>36</sup>

<sup>34</sup> See Uceda, Ricardo, *Muerte en el Pentagonito. Los cementerios secretos del Ejército Peruano*. Ed. Planeta, Lima, 2004, pgs. 372, 416 & 417.

<sup>35</sup> Supreme Court of Justice of the Republic, First Transitory Chamber, Extradition File No 02-2006, Amendment to Extradition Request, June 21, 2006, Lima.

<sup>36</sup> Supreme Court of Justice of the Republic, First Transitory Chamber, Extradition File No 02-2006, Amendment to Request for Extradition, June 21, 2006, Lima.

57. Furthermore, the criminal complaint filed against former president Alberto Fujimori for the alleged crime of aggravated homicide (murder) and forced disappearance, to the detriment of the persons named in the intake logbooks of the SIE, reads as follows:

According to the indictment presented by the Office of the Attorney General, in 1990 and the years that followed, in the context of the struggle against the subversive groups, Army Intelligence Service (SIE) personnel were assigned to the DINCOTE to undertake coordinated activities, which consisted of information gathering, tailing, and/or surveillance of persons thought to be involved in the crime of terrorism. In addition, intelligence posts (PILs) were set up in the city of Lima, composed of members of the SIE and National Police of Peru (PNP), who routinely took detainees to the Army Intelligence facility. These facts can be corroborated from the admission logbooks for that facility. The aforesaid persons were taken there to be tortured in order to collect information on subversive activities; the whereabouts of these persons is unknown and, therefore, it is presumed that they were eliminated by agents of the SIE and their bodies later incinerated, according to the person known as "Witness I".<sup>37</sup>

58. Moreover, the brief of June 7, 2007, prepared by the State's Attorney to the Supreme Court of Chile, Mónica Maldonado Croquevielle, in the context of the extradition application for former President Fujimori, notes the existence of cells in the basements of the SIE in which persons were held prisoner.<sup>38</sup> The brief also specifically refers to the existence of an incinerator in the aforesaid basements and to an expert analysis prepared by the medical examiner's office, which concluded that one of the samples collected from said incinerator corresponded to the remnants of a human bone. Specifically, the brief stated:

that there was a furnace on the premises (Inspections pgs.494-519), from which samples were extracted (expert analysis of the medical examiner p.1241) which proved to be a metal key and the remnants of a human bone that corresponded to the palmar surface of the diaphysis of the proximal phalange of the fourth finger on the right hand.<sup>39</sup>

59. It is noteworthy that the State's Attorney's brief expressly refers to the logbooks of the SIE and specifically mentions that the dates on which the detentions of the students Martín Roca and Kenneth Anzualdo occurred match the entries that appear in the aforesaid logbooks to the effect that they were admitted as detainees and put in cell 5C.<sup>40</sup>

60. The aforesaid brief also concludes that there are manifold, serious, and consistent indications from which it is possible to conclude for certain that the disappeared persons, including Kenneth Anzualdo Castro, were detained by agents of the State and deprived of liberty in cells located in the basements of the SIE.<sup>41</sup>

### 3. Background on the Disappearance of Kenneth Ney Anzualdo Castro

<sup>37</sup> Supreme Court of Justice of the Republic, Office of the Investigating Magistrate of the Supreme Court, Order to open investigation, File N° 45-2003 A.V., January 5, 2004.

<sup>38</sup> Office of the State's Attorney to the Supreme Court of Chile, Brief of State's Attorney Mónica Maldonado Croquevielle on the extradition request for Peruvian citizen Alberto Fujimori, Santiago, Chile, June 7, 2007, p. 38. Available at [http://www.lanacion.cl/prontus\\_noticias/site/artic/20070608/pags/20070608172925.html](http://www.lanacion.cl/prontus_noticias/site/artic/20070608/pags/20070608172925.html).

<sup>39</sup> *Idem*.

<sup>40</sup> *Idem*, pg. 42.

<sup>41</sup> *Idem*, pg. 42.



61. It has been established that the young man Kenneth Anzualdo Castro was a student at the *Universidad Técnica del Callao* and his friends included the students Martín Roca Casas, who disappeared in October 1993, two months before Kenneth Anzualdo,<sup>42</sup> Martín Palomino Sayrytupac, and José Antonio Melgar Arias. In this regard, José Antonio Melgar Arias mentioned in his testimony to the CVR that on one occasion, Kenneth Ney Anzualdo and Martín Roca Casas, both of whom were active Student Union leaders, took part in a protest march in which they discovered someone filming them. According to the declarant, his two friends confronted the person who was filming them, asked him for an explanation, and snatched the video camera away from him. Melgar Arias told the CVR that the students figured that he was someone from the Navy who had infiltrated their organization.<sup>43</sup>

62. It is also an uncontested fact, to which both the petitioners and the State have referred in the proceedings before the IACHR, that Kenneth Anzualdo Castro was detained along with six other fellow students on October 8, 1991, on suspicion of the crime of terrorism. The information available in the record before the IACHR says that Mr. Anzualdo Castro was released on that occasion with a summons to appear before the appropriate authority when required to do so.<sup>44</sup> For his part, Felix Vicente Anzualdo told the CVR that on October 8, 1991, his son was detained by the DINCOTE, at whose facility he was held for 15 days under investigation, after which he was released because no evidence was found linking him to subversive activities.<sup>45</sup>

63. As to the motive that led to Kenneth Anzualdo's disappearance at the hands of agents of the State, Mr. Felix Anzualdo Vicuña, told the CVR that his son had been friends with the student Martín Roca Casas,<sup>46</sup> and that Kenneth had been the last person to see him alive and was prepared to testify about the circumstances of his disappearance to the competent Prosecutor's Office. In fact, during his testimony to the CVR, Mr. Anzualdo stated:

(...) And they kidnapped him because he agreed, rather, to go to the Office of the Third Prosecutor and testify about the circumstances, about the final days on which he had seen Martín Roca alive. And they kidnapped him and the kidnapping took place two days before he was due to go to the Prosecutor's Office. So the Intelligence Service was definitely involved.<sup>47</sup>

64. The testimony of Martín Palomino Sayrytupac, who was a fellow university student and friend of Kenneth Ney's, is consistent with the testimony of Mr. Felix Anzualdo in pointing to that circumstance as the motive for young Anzualdo Castro's disappearance. Specifically, he said:

<sup>42</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

<sup>43</sup> CVR, Record of Testimony N° 700418, given by José Antonio Melgar Arias.

<sup>44</sup> Petitioners' communication from September 29, 1997 received at the Executive Secretariat of the IACHR on October 15, 1997 and State's communication from June 25, 1997 received at the Executive Secretariat of the IACHR on July 1, 1997.

<sup>45</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

<sup>46</sup> The forced disappearance of Martín Javier Roca Casas has been examined and adjudicated by the IACHR in Report N° 39/97, Case 11.233, February 19, 1998 when international responsibility of the State was found for these acts.

<sup>47</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

The same thing happened to Kenneth Anzualdo; they made him disappear because he agreed to be a witness for the prosecutor's office, in order to show with facts and documents that Martín Roca Casas studied at the School of Economics (UNAC), went to lectures like any other student, and thus strike down all those lies about him being a *senderista* [member of *Sendero Luminoso*], that he had dropped out and gone underground.<sup>48</sup>

65. At the same time, the record before the Commission shows that some days prior to his forced disappearance, Kenneth Anzualdo Castro went to the APRODEH offices to express his concern about the situation of his fellow student and friend, Martín Roca Casas, who was detained on October 5, 1993, and who was missing. Mr. Anzualdo said at APRODEH that in light of those events he was prepared to go to the Office of the Third Provincial Prosecutor of the Judicial District of Callao to testify about the circumstances in which he had last seen Martín Roca Casas.<sup>49</sup>

#### 4. The first investigations.

66. In the wake of the incident, the victim's next of kin filed various complaints to different State agencies and authorities, to no avail. As the record before the Commission shows, the victim's family made a series of efforts to establish his whereabouts. They went to various public agencies, including the National Police, DINCOTE, and the morgue. They also talked to members of the Association for Human Rights (APRODEH) and the family of Martín Roca Casas, another missing student. In this regard, record of testimony No. 100079, prepared by the CVR, specifically says that:

The family organized themselves to take the search to every possible public agency, everyone from the Police Station to the Morgue. Their search at DINCOTE left them empty handed. They filed a motion with a judge for a writ of habeas corpus to no avail. They went to the Harbormaster's Office of Callao, where Kenneth's father spoke with Captain Vallesteros, who advised him to report the incident to the Human Rights Institutions and gave him the address of APRODEH.<sup>50</sup>

67. As regards judicial proceedings, Kenneth Anzualdo's family filed a criminal complaint with the Office of the Fifth Criminal Prosecutor of Callao and lodged a *habeas corpus* petition to the Sixth Criminal Court in and for Lima. The evidence shows that on February 8, 1994, Mr. Felix Vicente Anzualdo Vicuña filed for a writ of *habeas corpus* on behalf of his son Kenneth Ney Anzualdo.<sup>51</sup> The petition was declared inadmissible in a ruling on February 11, 1994. The aforementioned ruling, reproduced verbatim below, stated that:

[P]ursuant to the provisions contained in the *habeas corpus* law, actions for protection shall not be admissible when the injured party opts to institute proceedings in the general jurisdiction, which is the situation that applies in the instant case; that, inasmuch as the facts that are the subject of the instant petition pertain to the jurisdiction of the Office of the Public Prosecutor in accordance with Article 6(3) of Law 23506 as amended by Article 2 of Law

<sup>48</sup> CVR, Record of Testimony N° 700646, given by Martín Palomino Sayrytupac, October 24, 2002.

<sup>49</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Fourth Session, June 22, 2002. Available at: [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).

<sup>50</sup> Truth and Reconciliation Commission, Record of Testimony N° 100079, given by Felix Vicente Anzualdo Vicuña, January 4, 2002.

<sup>51</sup> Sixth Criminal Court of Lima, *Habeas corpus* No. 2-94, Decision dated December 11, 1994.

25011; My RULING: TO DECLARE INADMISSIBLE the *habeas corpus* petition presented by Felix Vicente Vicuña.<sup>52</sup>

68. Later, on February 22, 1994, Mr. Felix Vicente Anzualdo Vicuña appealed the aforesaid decision denying the *habeas corpus* petition.<sup>53</sup> The appeal was rejected in a decision of February 23, 1994, on the grounds that the allowed time period had expired.<sup>54</sup>

69. Furthermore, on December 28, 1993, a complaint was filed against the persons responsible for the crime against the liberty of Kenneth Anzualdo Castro.<sup>55</sup> The record shows that the criminal complaint, which was lodged with the Office of the Fifth Provincial Prosecutor and assigned number 227-93-III,<sup>56</sup> was dismissed without prejudice in a decision June 3, 1994. The decision, reproduced below verbatim, examined and found:

[...] However, for want of further evidence to guide the investigation, a search was conducted of the aforementioned Kenneth Anzualdo's room at his home, where two copies of *El Diario* newspaper were found, dated February 21 and March 1, 1992, together with a newspaper clipping from section A-15 of the October 13, 1991 issue of *El Comercio* newspaper, in the upper left corner of which was a report on the arrest of six members of Sendero Luminoso as well as the seizure of terrorist propaganda material. The report also mentioned Kenneth Ney Anzualdo Castro and Rommel Anzualdo Castro, who were detained in the company of other apparent subversives because they were allegedly implicated in the death of former Minister of Labor Orestes Rodríguez Campos. Also seized were leaflets made at the University, along with four photographic negatives taken in Huaraz, according to family members, in which the image of the missing person appears against a background of slogans alluding to the Communist Party of Peru and President Gonzalo [the *nom de guerre* of Abimael Guzman]. Accordingly, it is deduced that the aforementioned is a sympathizer of the seditious group, based on the seized newspapers, and, therefore, he may have been intercepted by members of the Navy or the police, or, alternatively, he may have gone underground because he was implicated by *El Comercio* newspaper in the killing of the aforementioned former Minister of Labor. Consequently, this Provincial Criminal Prosecutors Office, DECIDES to provisionally close the investigation into the fate of Kenneth Ney Anzualdo Castro.<sup>57</sup>

70. Faced with this situation, on October 27, 1994 Mr. Felix Vicente Anzualdo Vicuña presented an appeal to challenge the aforesaid decision of the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao.<sup>58</sup> It is an undisputed fact that on January 12, 1995, the Office of the First Superior Court Prosecutor rejected the motion for

<sup>52</sup> Sixth Criminal Court of Lima, *Habeas corpus* No. 2-94, Decision dated December 11, 1994.

<sup>53</sup> Motion for appeal dated February 22, 1994, filed with the Sixth Criminal Court of Lima.

<sup>54</sup> Sixth Criminal Court of Lima, *Habeas corpus* No. 2-94, Decision dated February 23, 1994.

<sup>55</sup> Office of the Attorney General, Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, Official Letter No 335-03-OA-MP-5 ta.FPPC., December 31, 2003.

<sup>56</sup> According to the record of the judicial proceeding provided to the IACHR by the State, the Office of the Fifth Prosecutor adopted the following measures in connection with this complaint: i) statements taken from Santiago Cristóbal Alvarado Santos -the driver of the bus in which the alleged victims were traveling - (January 14, 1994), Marlene Arleny Anzualdo Castro -sister- (January 14, 1994), Felix Vicente Anzualdo Acuña -father- (January 17, 1994), Rubén Darío Trujillo Mejía -employee of APRODEH- (January 24, 1994), Milagros Juana Olivares -fellow university student- (February 10, 1994), and Yheimi Torres Tuanamá -fellow university student- (February 11, 1994); (ii) a search of the residence of the alleged victim by the Assistant Provincial Prosecutor on January 17, 1994; (iii) visit by the Provincial Prosecutor of the Office of the Fifth Prosecutor to the Detention Center at Callao Naval Base on April 26, 1994. Office of the Fifth Prosecutor of Callao, Investigation File No. 227-93-III. Annex submitted by the State in a communication received by the IACHR on July 20, 2007. Subsequent reports from different officials have to do with other investigative proceedings; however, the record of the judicial proceedings provided by the State contains no copies thereof.

<sup>57</sup> Office of the Attorney General, Office of the Fifth Provincial Prosecutor of Callao, Decision to close investigation, June 3, 1994.

<sup>58</sup> Office of the Attorney General, Office of the First Prosecutor before the Superior Court of Callao, Complaint No 227-93-III, Appeal. Received October 27, 1994.

reconsideration of closure [*recurso de queja*] and upheld the provisional closure of the proceedings. With the provisional closure of the proceedings, the investigation was left in the hands of the Police of the Office of the Prosecutor and, five years later, in 1999, the Chief of the Police Department of the Office of the Prosecutor of Callao presented a report to the Office of the Attorney General in which he informed that further investigation in the inquiry had failed to yield any positive results with respect to the whereabouts of the alleged victim.<sup>59</sup>

## 5. Amnesty Laws and the Effects of the Case Law of the Inter-American Court

71. On June 14, 1995, the Congress passed Law 26.479, which granted amnesty to military, police and civilian personnel involved in human rights violations committed between May 1980 and the date of enactment of the law, which was the same day it was approved.<sup>60</sup>

72. Pursuant to Article 1 of Law 26.479, the amnesty benefited all military, police, and civilian officials, whether they had been arraigned, investigated, tried, indicted, or convicted, before a regular or special court for common or military crimes. Article 4 of the law provided for the immediate release of all persons deprived of their freedom, whether they were arrested, detained, imprisoned, or serving a prison sentence. Article 6 ordered the permanent dismissal of all judicial proceedings that were ongoing or with a conviction issued, and prohibited the reopening of any new investigations into the subject matter of such proceedings.

73. On June 28, 1995, the Congress adopted Law 26.492 which interpreted Article 1 of Law 26.479 in the sense that observance of the general amnesty was mandatory for all bodies of the judiciary and encompassed all acts arising or originated from the occasion or as a consequence of the fight against terrorism from May 1980 until June 14, 1995, irrespective of whether or not the military, police, or civilian personnel involved were accused, investigated, on trial, or convicted. Article 6 of the Law provided that all judicial proceedings under way or, in which a sentence was being served, were dismissed with prejudice.<sup>61</sup>

74. The IACHR analyzed the amnesty laws and their consequences in 1996, and said that Law 26.479 infringed on the powers of the judiciary and that Law 26.492 "not only fails to provide an effective remedy, but goes much further, denying any possibility of

<sup>59</sup> According to that report, the police took the following further investigative measures: Request to the Registry for record of Identity and Marital Status, request for information from the Callao Harbormaster's Office regarding the discovery of a corpse, request to the Bureau of Immigration and Naturalization, request for information from the Directorate of State Security, request for information from the Antiterrorism Bureau, and the taking of a statement from Felix Vicente Anzualdo Acuña. Based on the numbering of the official letters in reference, it is presumed that all of the proceedings were carried out in 1999. However, the Commission does not have records of the above-cited investigation proceedings, which were not attached to the record of the judicial proceeding forwarded by the State. On September 15, 1999, the provincial prosecutor in charge of the Office of the Fifth Provincial Criminal Prosecutor of Callao "accounted for" the information from the police and requested that the proceedings continue and that any information be provided in a timely manner. *Cfr.* Office of the Fifth Provincial Prosecutor of Callao, Investigation File No. 227-93-III. Annex submitted by the State in a communication received by the IACHR on July 20, 2007.

<sup>60</sup> Law N° 26.479 granting a general amnesty to military, police and civilian personnel in different instances, published in the Official Gazette El Peruano on June 15, 1995.

<sup>61</sup> Law N° 26.492 enacted on June 30, 1995 and published in El Peruano on July 2, 1995.

appeal or of bringing an objection based on human rights violations.”<sup>62</sup> Accordingly, the IACHR recommended “that the Peruvian State repeal amnesty law (No. 26.479), and the law on judicial interpretation (N° 26.492), because they are incompatible with the American Convention, and to proceed to investigate, prosecute, and punish the State agents accused of human rights violations, especially violations that amount to international crimes.”<sup>63</sup>

75. On March 14, 2001, the Inter-American Court of Human Rights passed judgment in the Barrios Altos Case and found that Amnesty Laws No. 26.479 and No. 26.492 were incompatible with the American Convention on Human Rights and, consequently, lacked legal effect.<sup>64</sup> Subsequently, the Inter-American Court issued an opinion interpreting the judgment on merits and found that given the nature of the violation that amnesty laws No. 26.479 and No. 26.492 constituted, the decision in the judgment on the merits in the Barrios Altos Case had general effects.<sup>65</sup>

76. Therefore, while the aforesaid amnesty laws remained in force they provided for the dismissal of all judicial proceedings, whether ongoing or with a conviction issued, and prohibited the reopening of any new investigations into the subject matter of such proceedings. Thus, the Commission finds, on one hand, that at the time that those laws came into force, the investigation into the disappearance of Mr. Anzualdo was closed without prejudice; on the other hand, however, while the amnesty laws, which *per se* ran contrary to the American Convention, were in force, they made it impossible to proceed further with the investigations into the disappearance of Kenneth Anzualdo because there was no remedy available in the Peruvian legal system for the investigation and punishment of the agents of the State allegedly responsible and, therefore, those laws obstructed access to justice.

## 6. Further Investigation and Proceedings

### a. Complaint Filed with the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves, and subsequent proceedings thereon

77. The evidence on the record before the Commission shows that on October 10, 2002, the father of Kenneth Anzualdo Castro, together with the father of Martín Javier Roca Casas, lodged a petition to reopen the investigation into the abduction and forced disappearance of their sons with the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves.<sup>66</sup>

78. In the context of the investigations initiated by the aforesaid prosecutor’s office, Mr. Felix Vicente Anzualdo’s legal representative submitted a request for the

<sup>62</sup> IACHR, *Annual Report 1996*, Chapter V, Part 4, Section IV.C.

<sup>63</sup> IACHR, *Annual Report 1996*, Chapter V, Part 4, Section VIII.6.

<sup>64</sup> I/A Court H.R., *Barrios Altos Case. Judgment March 14, 2001*. Series C No. 75, Operative bullet point 4.

<sup>65</sup> I/A. Court H.R., *Barrios Altos Case. Interpretation of the Judgment on the Merits*. (Art. 67 American Convention on Human Rights). Judgment September 3, 2001. Series C No. 83, operative bullet point 3.

<sup>66</sup> Request to reopen investigation in the cases of the abduction and forced disappearance of Kenneth Ney Anzualdo Castro and Martin Roca. Intake Office of the Office of the Attorney General, Office of the Special Prosecutor on Forced Disappearance and Extrajudicial Executions, filed on October 10, 2002.

aforesaid State agency to transfer the proceedings to the Office of the Special Prosecutor for Human Rights, which had made progress in the case because it had been investigating the criminal organization run by Vladimiro Montesinos from inside the Intelligence Service, in order to avoid duplication of investigations. In a decision on April 13, 2005, the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves (which later became the Office of the Fifth Supra-Provincial Prosecutor) decided not to transfer the investigations.<sup>67</sup> In these circumstances, a motion for reconsideration was submitted on May 3, 2005; however, that motion was denied on July 6, 2005.<sup>68</sup>

79. Subsequently, in a decision of November 24, 2006, the Office of the Fifth Supra-Provincial Criminal Prosecutor (formerly the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves) decided to close the preliminary investigation into the disappearance of Kenneth Ney Anzualdo Castro. The aforesaid decision provided the following grounds for the closure of the case investigation:

**Five.** In official letter No. 45-2003-SPE-CSJ, the Clerk of the Special Criminal Chamber of the Supreme Court reported that there is a proceeding under way in that venue against Alberto Fujimori Fujimori for the Crime of Forced Disappearance to the Detriment of Kenneth Ney Anzualdo Castro, Martín Javier Roca Casas and Justiniano Najarro Rúa, and consequently certified copies of the Order to Initiate Proceedings and Amend the Order were duly enclosed. **Six.** The Constitution recognizes the concept of undue interference in judicial functions [*Avocamiento Indevido*], according to which no authority may take over proceedings pending before the courts or interfere in the exercise of their functions. **Seven:** In judgments issued in cases 1091-2002-HC/TC of August 12, 2002, and 2521-2005-PHC/TC of October 24, 2005, the Constitutional Court, the supreme interpreter of the Constitution, has found that, by its very nature, undue interference in judicial functions amounts to the displacement of the judge hearing a particular case leaving the proceeding to be adjudicated instead by another authority, of whatever rank it may be; it also indicates that regardless of the matter to be settled in a proceeding, it is obligatory to observe the basic guarantees of due process of law, which is a complex institution that transcends the purely jurisdictional sphere. Therefore, the investigative activities of the Office of the Attorney General must cease once a criminal court assumes jurisdiction over the case. **Eight.** Having become aware of the fact that court proceedings have been instituted against Alberto Fujimori Fujimori for the crime of forced disappearance, among other offences, to the detriment of Kenneth Ney Anzualdo Castro, Martín Javier Roca Casas *et al.*, it is necessary to rule in accordance with the guarantees of due process. Consequently, this Supra-Provincial Criminal Prosecutor's Office (...).<sup>69</sup>

80. Furthermore, the aforesaid Decision provided the following:

To close the investigation until the proceeding before the Court concludes or until the latter adopts an appropriate decision with respect to the alleged participation of other persons. Let the appropriate official letter be sent to the Special Criminal Chamber of the Supreme Court together with a certified copy of the instant decision.<sup>70</sup>

<sup>67</sup> Office of the Attorney General, Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves, Decision of April 13, 2005.

<sup>68</sup> Office of the Attorney General, Decision of the Office of the Fourth Prosecutor before the National Superior Criminal Court, dated July 6, 2005.

<sup>69</sup> Office of the Attorney General, Office of the Fifth Supra-Provincial Criminal Prosecutor, Decision of November 15, 2006.

<sup>70</sup> Office of the Attorney General, Office of the Fifth Supra-Provincial Criminal Prosecutor, Decision of November 15, 2006.

81. In response to this decision to close the case, on November 28, 2006, a motion for reconsideration was filed with the Office of the Fifth Supra-Provincial Criminal Prosecutor.<sup>71</sup> The motion was resolved in a decision of March 20, 2007, adopted by the Office of the Second Special Criminal Prosecutor for Organized Crime before the Superior Court, which vacated the appeal decision and ordered the investigations to continue.<sup>72</sup> The aforementioned decision, reproduced verbatim below, provided that:

To date, no meaningful, thorough, and conscientious preliminary investigation, as warranted in cases of alleged crimes against humanity, has been conducted by the police or the State prosecution service; instead, it has been noted that the proceedings have remained for many years in the possession of different prosecutor's offices, in both Callao and Lima. It is, therefore, imperative and urgent that the appropriate Provincial Criminal Prosecutor's Office directly take over this investigation as soon as possible and adopt, *inter alia*, the following measures:

- 1.- Take the statement of José Hinojosa Gaviria
  - 2.- Take the statement of Jesús Sosa Saavedra
  - 3.- Take the statement of Hernán Roberto Sánchez Valdivia
  - 4.- Take the statement of Miguel Rices Sáenz
  - 5.- Take the statement of Yuri Camacho Sánchez
  - 6.- Take the statement of Santos Guivos Suárez
  - 7.- Collect information on the career and non-commissioned officers who were on duty October and December 1993, and take such statements as might be appropriate.
  - 8.- Obtain certified copies of any procedural documents connected to the disappearance of Javier Roca Casas and Kenneth Ney Anzualdo Castro contained in the record of case 45-03 before the Special Chamber of the Supreme Court, and conduct any proceedings as may be deemed appropriate in light of said reports.
  - 9.- Obtain certified copies of the evidence provided by the next of kin of victims Javier Roca Casas and Kenneth Ney Anzualdo Castro, contained in the record of case 45-03 before the Special Chamber of the Supreme Court of the Republic.
  - 10.- Obtain an amended signed statement from Ricardo Manuel Uceda Pérez.
- Any other measures deemed to be necessary (...).<sup>73</sup>

82. At the time of the writing of this report, the Office of the Third Supra-Provincial Criminal Prosecutor (the prosecutor's office to which the investigations were referred after the Office of the Fifth Supra-Provincial Criminal Prosecutor was deactivated) was proceeding with the investigations into the facts in the instant case, the case file for which is numbered 04-2007.<sup>74</sup> According to the evidence in the record before the IACHR, as yet, no criminal indictment has been brought before the courts against the alleged perpetrators of Kenneth Anzualdo's disappearance.<sup>75</sup>

<sup>71</sup>Office of the Attorney General, Office of the Fifth Supra-Provincial Criminal Prosecutor of Lima, Motion for Reconsideration. Filed on November 28, 2006.

<sup>72</sup>Office of the Attorney General, Office of the Second Special Criminal Prosecutor for Organized Crime before the Superior Court, Decision of March 20, 2007.

<sup>73</sup>Office of the Attorney General, Office of the Second Special Criminal Prosecutor for Organized Crime before the Superior Court, Decision of March 20, 2007

<sup>74</sup>Office of the Attorney General, Office of the Third Supra-Provincial Criminal Prosecutor, Case No. 04-2007, March 29, 2007.

<sup>75</sup>According to information supplied by the State, the last act in said proceeding was carried out by the Office of the Third Supra-Provincial Criminal Prosecutor on June 15, 1994, in which a statement was taken from Hernán Roberto Sánchez Valdivia, as well as from Yuri David Camacho Sánchez (May 10, 2007) and Jesús Miguel Rices Sáenz. Other than the testimony from these witnesses, the file only contains the following additional evidence: the list of names of the career and non-commissioned officers who served at the SIE in 1992 and 1993; and the replies of the Lieutenant General, of the Major General of the Chief of Staff of the Army (May 9, 2006) and of the Commander-in-Chief of the Navy (May 19, 2006),

**b. Investigations carried out by the Office of the Special Human Rights Prosecutor of the Anticorruption System in connection with the basement at the Army Intelligence Service (SIE) facility**

83. According to the evidence in the record, an investigation into the criminal organization run by Vladimir Montesinos Torres from the Intelligence Service is being carried out by Office of the Special Human Rights Prosecutor of the Anticorruption System.<sup>76</sup> According to the evidence provided, those investigations have not led to an indictment of the persons allegedly responsible.

**c. Criminal Proceeding before the Office of the Investigating Magistrate of the Supreme Court of Justice of the Republic under Case File N° 45-2003 A.V.**

84. According to the evidence, on December 9, 2003, the Office of the Attorney General presented a criminal indictment against former president Alberto Fujimori, on charges of aggravated homicide (murder) and forced disappearance, to the detriment of the persons named in the logbooks of the SIE.<sup>77</sup> On November 29, 2005, Mr. Felix Vicente Anzualdo Vicuña filed a petition for the expansion of the investigation against former president Alberto Fujimori in order to include Kenneth Ney Anzualdo Castro as a victim of the crime of forced disappearance.<sup>78</sup>

85. In a decision of February 8, 2006, the Office of the Investigating Magistrate of the Permanent Criminal Chamber of the Supreme Court issued an expansion of the order to open a preliminary investigation, dated January 5, 2004, to include as injured parties Kenneth Ney Anzualdo and Javier Roca Casas, who were alleged victims of the crime of forced disappearance.<sup>79</sup>

86. Subsequently, in a Supreme Court Judgment of June 21, 2006,<sup>80</sup> in conjunction with the decision of July 13, 2006,<sup>81</sup> the First Transitory Criminal Chamber of the Supreme Court ruled that the request for extradition of Alberto Fujimori for the forced disappearance of Kenneth Ney Anzualdo Castro *et al.* was admissible. The extradition

---

in which they stated that they were unable to identify so-called "Captain Valverde". Annex submitted by the State in a communication received by the IACHR on July 20, 2007.

<sup>76</sup> Office of the Attorney General, Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves, Decision of April 13, 2005.

<sup>77</sup> Supreme Court of Justice of the Republic, Office of the Investigating Magistrate of the Supreme Court, Order to Open Investigation. File N° 45-2003 A.V., January 5, 2004.

<sup>78</sup> Request for amendment of order to investigate filed by Felix Vicente Anzualdo Vicuña. Received on November 29, 2005.

<sup>79</sup> Supreme Court of Justice, Permanent Criminal Chambers, Office of the Investigating Magistrate, Order to expand investigation, Av. N° 45-2003, February 8, 2006.

<sup>80</sup> Supreme Court of Justice, First Transitory Criminal Chambers, Extradition A.V. NO 2-2006, Supreme Court Judgment, Amendment of Request for Extradition, June 21, 2006.

<sup>81</sup> Supreme Court of Justice, First Transitory Criminal Chamber, Extradition A.V. NO 2-2006, July 13, 2006.



proceeding was assigned case number 2-2006 and considered supplemental to and an expansion of case 14-2005.<sup>82</sup>

87. In summary, the victim's next of kin pursued every remedy available to them and yet, more than 13 years after the incident occurred, the case has still not been investigated in a diligent and effective manner so as to produce concrete findings in an attempt to ascertain the truth, obtain justice, and, in so doing, punish those responsible.

## VII. BASIS IN THE LAW

### 1. General Considerations on Forced Disappearance

88. The Court has referred to the practice of forced disappearance since its earliest cases, and has found that:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but also places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.<sup>83</sup>

89. The case law of the inter-American system has determined that forced disappearance constitutes an unlawful act that gives rise to continuing violation of a number of rights protected by the Convention; it is a crime against humanity. Forced disappearance also means that the obligation to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention has been disregarded.<sup>84</sup> If the State engages in or tolerates activities to bring about forced or involuntary disappearance, or if it fails to investigate such activities properly and, where appropriate, punish those responsible for such violations, the State breaches its duty to respect and ensure the free and full exercise of the rights recognized in the American Convention.<sup>85</sup>

90. It should also be noted that the system's case law has held that the State's international responsibility is aggravated when the disappearance is a feature of State practice.<sup>86</sup>

91. For its part, the General Assembly of the Organization of American States has declared that "the forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity,"<sup>87</sup> and that "this practice is cruel and

<sup>82</sup> Supreme Court of Justice, First Transitory Criminal Chamber, Extradition A.V. NO 2-2006, July 13, 2006..

<sup>83</sup> I/A Court H.R. *Blake Case*, *supra*, par. 66.

<sup>84</sup> I/A Court H.R., *Case of the 19 Merchants*. Judgment July 5, 2004. Series C No. 109, par. 142.

<sup>85</sup> I/A Court H.R., *Case of the "White Panel" (Paniagua Morales et al)*. Judgment of March 8, 1998. Series C No. 37, par. 90.

<sup>86</sup> I/A Court H.R., *Hermanas Serrano Cruz Case. Preliminary Objections*. Judgment November 23, 2004. Series C No. 118, par. 100 quoting I/A Court H.R., I/A Court H.R., *Molina Theissen Case. Reparations* (Art. 63.1 Inter-American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, par. 41.

<sup>87</sup> Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

inhuman, mocks the rule of law, and undermines those norms which ensure protection against arbitrary detention and the right to personal security and safety.”<sup>88</sup>

**2. The State is responsible for violation of the right of Kenneth Ney Anzualdo under Article 7 (right to personal liberty) of the American Convention in conjunction with Article 1(1) of that instrument**

92. Article 7 of the American Convention recognizes the right to personal liberty. Said article provides,

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

93. Violation of the right to personal liberty was the first of the many infringements of the Convention that were committed in the detention and subsequent disappearance of Kenneth Ney Anzualdo Castro.

94. First of all, it must be remembered that, even in the legitimate use of its authority, the power exercised by the State to fulfill its obligation to guarantee security and maintain public order is not unlimited. On the contrary, the State has the duty to apply procedures that are in accordance with the law and that respect the fundamental rights of all individuals under its jurisdiction.<sup>89</sup>

95. The organs of the inter-American system have developed a number of standards to determine if deprivation of liberty is compatible with paragraphs 2 and 3 of Article 7 of the Convention. The case law of the Inter-American system has found that the aforesaid paragraphs of Article 7 impose limits on the power of the State that prohibit both illegal and arbitrary detention. Concretely, the doctrine of the Commission provides that the

<sup>88</sup> Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

<sup>89</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003. Series C No. 99, par. 86.

analysis of the compatibility of deprivation of liberty with the provisions of Article 7(2) and (3) of the American Convention should be performed in three phases:

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary<sup>90</sup>.

96. The evidence before the Commission shows that Kenneth Anzualdo Castro was deprived of liberty, not only arbitrarily, but also illegally; in other words, in a manner contrary to the grounds and circumstances recognized in the Constitution and in criminal procedural law in force in Peru at the time of the events. Indeed, under the Peruvian Constitution, a person may only be detained by order of a competent authority or in *flagrante delicto*.<sup>91</sup> Neither of these conditions was met in the instant case. Indeed, in the first place, the information available on the circumstances of the arrest clearly shows that it was not a situation of *flagrante delicto*. It has been demonstrated that the victim was not engaged in criminal acts at the time he was deprived of liberty so as to warrant his detention by agents of the State. On the contrary, it has been demonstrated that the victim was traveling home quietly on a bus one night after a day of university activities when agents of the State intercepted the vehicle in which he was traveling and proceeded to detain him without a court order for that purpose.

97. With respect to Article 7(5) of the Convention, the Inter-American Court has found that said rule provides that detention of an individual must be subject to court review without delay, as a means of control to impede arbitrary and unlawful detentions. Whoever is deprived of his or her liberty without a court order must be set free or immediately brought before a judge<sup>92</sup>.

98. It has been shown that the victim was not arrested so that he might be taken before a judge or some other official with legal authority to decide the lawfulness of his arrest, but in order to take him to a clandestine detention center in the basements of the SIE facility, in order to later forcibly "disappear" him.

99. Finally, the Commission finds that the State has violated Article 7(6) of the Convention by failing to allow him the possibility to seek by his own means a prompt and effective recourse to decide the legality of his detention and, also, by keeping him deprived of liberty in a place other than an official detention center or place conditioned for that purpose, and without any institutional controls, such as records or minutes, by which to establish the date, form and conditions of the victim's detention.

<sup>90</sup> IACHR, Report 53/01, Case 11.565. Ana, Beatriz and Celia González Pérez. Mexico, April 4, 2001, par. 23.

<sup>91</sup> Constitution of Peru, 1979, Article 2.20 (b) "Restrictions on personal liberty of any kind are not permitted, except in the cases provided by law;" and Article 2.20 (g) "No person may be arrested except by a written, substantiated order from a judge or, in cases of *flagrante delicto*, by the police."

<sup>92</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 95.

100. Furthermore, it should be noted that the Truth and Reconciliation Commission found in its final report that deprivation of liberty in cases of forced disappearance is not limited to this violation but is followed by denial of the events or absence of information; in other words, by a lack of acknowledgement of the detention or arrest by the agent of the State.<sup>93</sup>

101. In sum, Article 7 of the American Convention establishes positive obligations that impose specific requirements both on the agents of the State and on third parties acting with their tolerance or consent.<sup>94</sup> Hence, the Commission believes that the State has not observed those requirements. The absence of this set of basic legal protections coincides, moreover, with the existence of a pattern of violations at the time. Indeed, arbitrary detention has been documented in the Report of the Truth and Reconciliation Commission as one of the steps in the procedure used as part of the counter-subversion plan implemented at that time, which normally culminated in the arbitrary execution of the victims. As noted, the Truth and Reconciliation Commission referred to this whole procedure as "a clandestine circuit of detention and eventual execution."<sup>95</sup>

102. The way in which the detention of Kenneth Anzualdo Castro was carried out indicates that neither the circumstances nor the methods used by the agents of the State to deprive him of liberty were compatible with the observance of the right to personal liberty.

103. In light of the foregoing, the Commission declares that the Peruvian State violated Article 7 of the American Convention, in conjunction with Article 1(1) of the aforementioned international instrument, to the detriment of Kenneth Ney Anzualdo Castro.

**3. The State is responsible for violation of the rights of the victims under Article 5 (right to humane treatment) of the American Convention in conjunction with Article 1(1) of that instrument**

104. Article 5 of the American Convention provides that:

"1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

[...]

**a. With respect to Kenneth Ney Anzualdo**

105. Based on the evidence available, the Commission has found in this report that the victim was illegally and arbitrarily detained and kept out of judicial control. The

<sup>93</sup> Truth and Reconciliation Commission, Final Report, Lima: CVR, 2003, Vol. VI, 1.2. "Forced Disappearance of Persons by Agents of the State", 1.2.2.1. "Forced Disappearance As a Sophisticated Crime", p. 63.

<sup>94</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 81.

<sup>95</sup> Truth and Reconciliation Commission, Final Report, Lima: CVR, 2003, Vol. VI, Patterns in the Perpetration of Crimes and Human Rights Violations.

IACHR has determined that Kenneth Ney Anzualdo Castro was abducted on December 16, 1993, on his way home from the Universidad del Callao. In this regard, it is important to recall that a person who is unlawfully and arbitrarily detained is in a situation of vulnerability that creates a real risk that his other rights, such as the right to personal integrity and humane treatment, will be violated.<sup>96</sup>

106. Indeed, based on the circumstances in which the victim was detained, transported, and concealed, coupled with the uncertainty as to the final outcome of the deprivation of his liberty, given the systematic practices of extrajudicial execution and forced disappearance that existed at that time, it is reasonable to surmise that Kenneth Anzualdo felt afraid, anxious, vulnerable, and defenseless throughout his detention, particularly bearing in mind his knowledge of the recent disappearance of his friend and fellow student, Martín Roca. It is reasonable to assume that the victim's mental and psychological integrity were affected as a result of being taken by force to a clandestine detention center without any judicial guarantees, where he was held incommunicado and ultimately "disappeared".

107. The evidence in the record connected with the section on proven facts shows that prisoners were tortured and subjected to inhumane and degrading treatment at the clandestine detention center where Kenneth Anzualdo was taken. With respect to forced disappearance of persons, as in the case of Kenneth Anzualdo, the Court has held,

[I]nvestigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhumane and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention.<sup>97</sup>

108. By the same token, it is obvious that to be deprived of liberty in a context where forced disappearance is systematically practiced enables and facilitates interrogation with the use of violence and torture, which were the methods to which the person under interrogation was normally subjected in order to extract information.

109. In addition to the foregoing, the Commission considers it important to mention that the circumstances in which Kenneth Anzualdo was deprived of liberty facilitated violation of the victim's right to humane treatment through the coercive isolation and deprivation of communication to which he was subjected in the basements of the SIE,<sup>98</sup> to the detriment of his psychological and mental wellbeing.

110. The case law of the Inter-American system has determined that deprivation of communication is in itself cruel and inhuman treatment, harmful to the psychological and emotional integrity of the person and a violation of the right to respect of any detainee

<sup>96</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 96, citing I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 150; I/A Court H.R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, par. 90; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 166. See, also, in this regard, ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25. Par. 167.

<sup>97</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 156.

<sup>98</sup> UN Human Rights. *Enforced or Involuntary Disappearances*. Fact Sheet N° 6, Geneva, 1993, pp. 1 and 2.

because of his inherent dignity as a human being; such treatment, therefore, violates Article 5 of the Convention.<sup>99</sup> It has also been established that even in cases where deprivation of liberty is legitimate,

One of the reasons that incommunicado detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces emotional and psychological suffering in any person, places him in a particularly vulnerable position.<sup>100</sup>

111. In turn, on the subject of incommunicado detention, the Inter-American Commission has held, "Abuse of this exceptional measure renders the individual unnecessarily vulnerable, and itself may constitute a form of mistreatment."<sup>101</sup> In the instant case, the inability of the victim to communicate with his family prevented knowledge of his whereabouts or physical and emotional state since the time of his abduction.

112. The Inter-American Court has also ruled that "the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of mental anguish that it may be considered 'psychological torture,'"<sup>102</sup> and that "it is inherent in human nature that any persons subjected to violence and ill-treatment [...] (unlawful detention, cruel, inhuman and degrading treatment, and death), experience bodily pain and deep suffering and anguish; consequently, this damage does not require proof."<sup>103</sup>

113. As to the length of time that the victim was held in detention, the IACHR finds it appropriate to note that a brief period of detention is enough for it to constitute an infringement of his psychological and mental integrity according to the standards of international human rights law, particularly since, it may be presumed that the treatment of the victim during his isolation was inhuman, degrading, and extremely aggressive.<sup>104</sup> In that regard, the evidence in the instant case suggests that Kenneth Anzualdo was detained for several days in the basements of the SIE.

114. The Commission also finds that the State's lack of due diligence is plainly demonstrated by its failure to conduct, based on the complaints presented by family members of the victims and human rights organizations, a meaningful, impartial, and

<sup>99</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 156.

<sup>100</sup> I/A Court H.R., *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, par. 90.

<sup>101</sup> See, IACHR, *Right to humane treatment*, in *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc.10, rev.1 1997. Amnesty International has warned that "Torture most often occurs during a detainee's first days in custody. Those vulnerable hours are usually spent incommunicado, when the security forces maintain total control over the fate of the detainee, denying access to relatives, lawyer or independent doctor." Amnesty International, *Torture in the Eighties*, 110 (1984).

<sup>102</sup> I/A Court H. R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, par. 92.

<sup>103</sup> I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 248.

<sup>104</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 98; *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, pars. 128 and 150; *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, pars. 82 and 83; *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, pars. 162 and 163.

effective investigation, within a reasonable time and in accordance with the guarantees of due process, in order to clarify the facts and, in particular, to identify and punish the persons who perpetrated and masterminded those events, in keeping with its obligation under Article 1(1) of the Convention to ensure the right to humane treatment.

115. In this respect, the Inter-American Court has held that in light of the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, as set forth in Article 1.1 of the American Convention, the State has the duty to immediately and ex officio begin an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.<sup>105</sup> In the instant case, the investigations carried out proved ineffective and failed to clarify the acts that violated Kenneth Ney Anzualdo Castro right to humane treatment during his detention. The Commission will present its considerations on the deficiencies in the criminal proceedings in the case in the section on the rights recognized in Articles 8 and 25 of the American Convention.

**b. With respect to Kenneth Anzualdo's next of kin**

116. As regards Kenneth Anzualdo's next of kin, the IACHR considers that their mental and psychological integrity was harmed as a direct result of the illegal and arbitrary deprivation of the victim's liberty, the lack of knowledge of his whereabouts, his disappearance, and the failure to investigate the events in question.<sup>106</sup>

117. Illegal deprivation of liberty and forced disappearance, coupled with an absence of results in remedies sought by next of kin and failure to conduct an effective and diligent investigation, create a sense of unease, distrust, and despair in family members that ends up seriously injuring their psyche and, therefore, their individual well-being.

118. The IACHR also draws attention to the fact that the Inter-American Court has referred to the importance of delivering the bodies of victims to their next of kin and to provide them with information on progress in investigations, as well as the importance of affording them the opportunity to bury them "according to their traditions, values and beliefs,"<sup>107</sup> so as not to increase their suffering.

119. The Court has also held previously that it is reasonable to surmise that the suffering endured by the victim also affected his next of kin, particularly those with close affective ties to him.<sup>108</sup>

<sup>105</sup> I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 159.

<sup>106</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 101; See, also, I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 118.

<sup>107</sup> I/A Court H. R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, pars. 173 and 174.

<sup>108</sup> I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 160; I/A Court H. R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 191; I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 249; I/A Court H. R., *Case of Maritza Urrutia*.

120. Indeed, the suffering experienced by the family as a result of his detention and death, as well as the feelings of powerlessness and anxiety endured in the course of years of inactivity by the State authorities in clarifying the events and punishing those responsible, in spite of reiterated requests and complaints lodged with the authorities over 13 years, are grounds to consider the next of kin victims of cruel, inhuman, and degrading treatment.<sup>109</sup> In his testimony to the CVR, the father of Mr. Anzualdo Castro said that the disappearance of Kenneth Ney Anzualdo and the anxiety of not knowing where he is, has been a source of permanent grief, as well as yearning, feelings of powerlessness, and despair in not finding justice. Coupled with the foregoing is the fact that it has been the missing man's family who, on their own initiative, has investigated the facts in the case, despite lacking the means to do so:

Those are the facts of the matter; since the day he left my house never to return. The truth is that it has completely destroyed the family because the...it's too much, the yearning, the powerless feeling, the despair. The Christmases, the Mother's Days, the Father's Days; we've lost. The absence grows bigger, the sadness greater; it's a feeling that increases day by day, as if there was nothing that we could do. It's a constant torment: whether he's alive or dead. If he's alive, we don't know. What happened? And if he's dead, you cry, you console each other, you know he's alright. But not knowing anything is the worst; you lose faith, hope of finding justice. There is nothing else we can do. The only question left to us is what do I have to do to find justice? And I think the answer is in the hands of those who administer justice for us.

I would ask the officials to investigate, to look, and to ensure a fair and thorough investigation. What happened? What went on? Fair enough, if a person made a mistake; let him be tried; and if he's found guilty, at least shoot him, but don't treat him like some animal. He was kidnapped and disappeared as if he were a thing. I think that's why the mark left by this scourge won't go away and the wounded hearts that all of us here have suffered won't heal just like that.<sup>110</sup>

121. The Commission has found that in the framework of a systematic policy of multiple human rights violations, Kenneth Ney Anzualdo Castro was abducted by agents of the State and has been missing since the day he was arbitrarily deprived of liberty. In addition, it has been established that, since Kenneth Ney Anzualdo Castro's abduction, his next of kin have received no information about his whereabouts from the State authorities, despite the many efforts that have been made by them to find him. Accordingly, they have suffered and continue to suffer the effects of his forced disappearance, which, at the time of this writing, remains unsolved and has gone unpunished.

122. Based on the above considerations, the Commission concludes that the State of Peru violated Article 5 of the American Convention, in conjunction with Article 1.1 of the same international instrument, to the detriment of Kenneth Ney Anzualdo Castro and his closest relatives; namely, his father, mother and two siblings.

Judgment of November 27, 2003. Series C No. 103, par. 162; I/A Court H. R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 98.

<sup>109</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 101; see, also, I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 118.

<sup>110</sup> Truth and Reconciliation Commission, Public Hearings in Lima, Case 26, Testimony of Felix Anzualdo Vicuña, Fourth Session, June 22, 2002. Available at [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php).



4. The State is responsible for violation of the right of Kenneth Ney Anzualdo Castro under Article 4 (right to life) of the American Convention, in conjunction with Article 1 of the same instrument.

123. Article 4(1) of the American Convention provides:

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

124. As to the right to life, the Inter-American Court has held:

[T]he right to life plays a key role in the American Convention as it is the essential corollary for realization of the other rights. When the right to life is not respected, all other rights are meaningless. The States have the obligation to ensure creation of the conditions required to avoid violations of this inalienable right and, specifically, the duty of avoiding violations of this right by its agents. Compliance with Article 4, in combination with Article 1(1) of the American Convention, not only requires that no person be deprived of his life arbitrarily (negative obligation), but also that the States take all appropriate measures to protect and preserve the right to life (positive obligation), as part of their duty to ensure full and free exercise of the rights by all persons under their jurisdiction. This active protection of the right to life by the State does not only involve legislators, but all State institutions and those who must protect security, both its police forces and its armed forces. Due to the above, the States must take all necessary measures not only to prevent and punish deprivation of life as a consequence of criminal acts, but also to prevent arbitrary executions by its own security forces.<sup>111</sup>

125. The IACHR has noted that one of the multiple violations of the Convention that forced disappearance entails is:

"secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention."<sup>112</sup>

126. The Commission considers it essential to point out in this regard that the case law of the Inter-American system has also determined that when a person has disappeared in a context of violent events and has been missing for 13 years it is sufficient reason to conclude that they have been deprived of their life.<sup>113</sup> The circumstances in which the detention occurred, the absence of a prompt investigation of the facts, the time elapsed without any information on Kenneth Ney Anzualdo Castro's whereabouts, and the existence of a practice of forced disappearance implemented and tolerated by the Peruvian State at the time of the events, provide reasonable grounds to presume that the victim was deprived of his life in an extrajudicial execution perpetrated by agents of the State.<sup>114</sup> Consequently, the Peruvian State violated Article 4 of the American Convention in

<sup>110</sup>I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 172; and *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, pars. 144-145. See, also, *United Nations Human Rights Committee*, General Comment 6/1982, par. 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 6 (1994); and *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N. Doc. Supp. No. 40 (A/37/40) in 137 (1982), p. 137. Cited by the I/A Court H.R., in *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 110.

<sup>112</sup>I/A Court H.R., *Case of the Caracazo*, par. 50(a); I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988, par. 157.

<sup>113</sup>I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, par. 188.

<sup>114</sup>I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 109.

connection with Article 1(1) thereof, inasmuch as it failed to observe the right to life of Kenneth Ney Anzualdo through his forced disappearance at the hands of State agents.

127. The Peruvian State also breached its obligation to ensure the right to life of Kenneth Ney Anzualdo due to the fact that he was in the custody of the State after being abducted by its agents. In this respect, the court has found:

As guarantor of this right, the State must prevent those situations –such as the current one in *sub judice* case- that might lead, by action or omission, to suppression of inviolability of the right to life. In this regard, if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence, because in its role as guarantor the State has the responsibility both of ensuring the rights of the individual under its custody and of providing information and evidence pertaining to what happened to the detainee.<sup>115</sup>

128. As guarantor, the State was required to offer explanations about the whereabouts of the victim and promptly conduct an investigation into the facts.<sup>116</sup> Therefore, the Commission finds that the State failed to discharge its obligation to ensure the right to life through a meaningful, diligent, and impartial investigation. The evidence suggests that although investigations were carried out, they were notable for their delays and ineffectiveness.

129. The State's failure to investigate and punish those responsible constitutes a breach of its duty to ensure for the victim and their next of kin their right to the free and full exercise of human rights,<sup>117</sup> and for society the right to know what happened.<sup>118</sup> Failure to investigate and impunity are especially grave in cases of violations of the right to life in the context of a pattern of systematic human rights violations, since they foster a suitable climate for chronic recidivism of said abridgments.<sup>119</sup> By failing to conduct a proper investigation into the disappearance of Kenneth Ney Anzualdo Castro, in spite of its position as guarantor, the Peruvian State committed a violation of Article 4 of the American Convention, in conjunction with Article 1(1) thereof.

130. Furthermore, the Commission has demonstrated that a pattern of violations of the right to life existed in Peru at the time of the events. For its part, in its recent case law

<sup>115</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 111, citing Eur. Court HR, *Timurtas v. Turkey*, Judgment of 13 June 2000, *Reports of Judgments and Decisions 2000-VI*, par. 82; Eur. Court HR, *Salman v. Turkey*, Judgment of 27 June 2000, *Reports of Judgments and Decisions 2000-VII*, par. 99; I/A Court H. R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, par. 42.b); I/A Court H. R., *Case of the Mayagna (Sumo) Awas Tingni Community*, *supra*, par. 99; I/A Court H. R., *Cantoral Benavides Case*, *supra*, par. 55; I/A Court H. R., *Durand and Ugarte Case*, *supra*, par. 65.

<sup>116</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 112.

<sup>117</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 134. See, also, IACHR, Resolution No. 1/03 On Trial for International Crimes, October 24, 2003, in IACHR, Annual Report of the Inter-American Commission on Human Rights 2003, December 29, 2002, Annex I.

<sup>118</sup> I/A Court H.R., *Case of Trujillo Oroza. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, pars. 99-101 and 109; and I/A Court H.R., *Case of Bámaca Velásquez. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, pars. 74-77.

<sup>119</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 132; I/A Court H. R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, par. 156.

the Inter-American Court has recognized the systematic practice of extrajudicial executions in Peru.<sup>120</sup> Thus, the Inter-American Court has ruled:

[W]hen there is a pattern of human rights violations, including extra-judicial executions fostered or tolerated by the State, contrary to the *jus cogens*, this generates a climate that is incompatible with effective protection of the right to life. [...] When the right to life is not respected, all the other rights are meaningless. The States have the obligation to ensure the creation of the conditions necessary to avoid violations of this inalienable right and, specifically, the duty of preventing its agents from violating this right.<sup>121</sup>

131. In the instant case, as the Final Report of the Truth and Reconciliation Commission indicates, at the time of the victim's disappearance there existed in Peru a systematic practice of extrajudicial executions and forced disappearance attributed to agents of the State.

132. Consequently, it is valid and logical to conclude that the victim was executed and that Kenneth Anzualdo's disappearance and killing was not an isolated incident but an extrajudicial disappearance perpetrated by State agents in the context of a pattern of extrajudicial executions and forced disappearances that existed at that time.

133. Based on the foregoing, the Commission finds that the Peruvian State breached its obligation to observe Kenneth Ney Anzualdo Castro's right to life in view of the fact that his forced disappearance is attributable to agents of the State. Furthermore, the Peruvian State failed to prevent the violation of the victim's right to life and to discharge its obligation to ensure said right by not conducting a prompt investigation of the facts, in spite of its position as guarantor, or punishing those responsible, all in violation of Article 4(1) of the American Convention, in connection with Article 1(1) thereof, to the detriment of Kenneth Ney Anzualdo Castro.

**5. The Peruvian State is responsible for violation of the rights of the victim under Articles 8 and 25 (rights to a fair trial and judicial protection) of the American Convention, in conjunction with Article 1(1) of that instrument.**

134. The Inter-American Commission considers that the Peruvian State breached its obligation to conduct a proper, effective investigation into the abduction and forced disappearance of the victim, in violation of Articles 8, 25 and 1(1) of the American Convention.

135. Article 8.1 of the Convention provides:

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

<sup>120</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 67 (a).

<sup>121</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 128; See, also, I/A Court H. R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 156.

136. In turn, Article 25 of the Convention states:

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

137. For its part, Article 1.1 of the American Convention provides:

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

138. With respect to fair trial guarantees, the Court has found:

for true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof.<sup>122</sup>

139. Indeed, Article 8 of the American Convention contains a series of procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees under the Convention.<sup>123</sup> This Article includes different rights and guarantees emanating from a common juridical asset or good and which considered as a whole constitute a single right not specifically defined but whose unequivocal purpose is definitely to ensure the right of everyone to a fair trial.<sup>124</sup>

140. Furthermore, both Article 8 and Article 25 of the American Convention "are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees."<sup>125</sup> Article 25(1) of the American Convention incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights.<sup>126</sup> For such a remedy to exist, the Convention requires that it be truly effective in establishing whether there has been a violation of human rights established in the Convention and in providing redress.<sup>127</sup> Thus, the Inter-American Court concluded, "A remedy which proves to be illusory because

<sup>122</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 124.

<sup>123</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 27.

<sup>124</sup> Cf. European Court of Human Rights, *Golder Case*, Judgment of February 21, 1975, Series A, No. 18, par. 28, in regard to Article 6 of the European Convention on Human Rights, which contains substantially the same rights and guarantees as Article 8 of the American Convention.

<sup>125</sup> I/A Court H.R., Advisory Opinion OC-9/87, par. 30.

<sup>126</sup> I/A Court H.R., Advisory Opinion OC-9/87, par. 24.

<sup>127</sup> *Ibid.*, par. 24.

of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective."<sup>128</sup>

141. The protection afforded by the provisions reproduced above is reinforced by the general obligation to respect human rights dictated by Article 1(1) of the Convention. In this respect, the Court has expressly found:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. [...] Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society [...]." That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.<sup>129</sup>

142. In the aforementioned international regulatory framework, it should be mentioned that the government obligation to investigate and punish human rights violations must be seriously undertaken by states. The Inter-American Court has had this to say on this point:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is a duty of means or behavior that is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.<sup>130</sup>

143. The duty to investigate is not breached merely because no one has been convicted in the case, or because, despite the efforts made, it is impossible to clearly establish the facts. Nonetheless, to establish convincingly and credibly that this result has not been the product of running mechanically through certain procedural formalities

<sup>128</sup> *Ibid.*

<sup>129</sup> I/A Court H.R., *Loayza Tamayo Case. Reparations*, Art. 63(1) American Convention on Human Rights. Judgment of November 27, 1998. Series C No. 42, par. 169.

<sup>130</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par. 177. For its part, the Constitutional Court of Colombia has held, "To ensure effective protection of human rights it has been considered insufficient under international law simply to award damages to victims and injured parties, inasmuch as truth and justice are necessary to ensure the non-repetition in a society of situations that produce gross violations of human rights and, furthermore, because recognition of the dignity and of the equal and inalienable rights inherent to all human beings requires that the judicial remedies designed by states seek comprehensive reparation for victims and injured parties, which includes both financial reparation and access to justice to know the truth about what happened, and to seek, through institutional mechanisms, a just punishment for those responsible." Judgment C-228/02 of April 3, 2002.

without the State effectively seeking the truth, the State must show that it has carried out an immediate, exhaustive, serious, and impartial investigation.<sup>131</sup>

144. The aforementioned obligation to investigate any acts that entail a violation of the rights protected by the Convention -and impose the corresponding penalty on the culprits- requires that both those who commit human rights violations and those who mastermind them be investigated, prosecuted, and punished.<sup>132</sup>

145. Consequently, the State has the duty to investigate human rights violations, prosecute those responsible, and avoid impunity, which has been defined as "the total lack of investigation, prosecution, arrest, trial and conviction of those responsible for violations of the rights protected by the American Convention."<sup>133</sup> In this regard, the Inter-American Court has found that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenseless of victims and their relatives."<sup>134</sup>

146. According to the evidence in the record before the IACHR, the investigations carried out into the forced disappearance of Kenneth Ney Anzualdo Castro have been characterized by profound negligence on the part of the judicial authorities in collecting evidence, instituting proceedings, and, most particularly, in taking an unjustifiably long time to conclude those investigations and prosecute the suspected planners and perpetrators.

147. Moreover, the organs of the inter-American system have concluded that the duty to investigate with due diligence includes the obligation to carry out all the necessary proceedings within a reasonable time.<sup>135</sup> Thus, three basic criteria have been established for determining a reasonable time: a) the complexity of the matter; b) the judicial activity of the interested party; c) the behavior of the judicial authorities.<sup>136</sup>

<sup>131</sup> IACHR, Annual Report 1997, Report 55/97, Case 11.137 (Juan Carlos Abella *et al.*), Argentina, par. 412. On the same subject see, also, IACHR, Annual Report 1997, Report 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, pars. 96 and 97.

<sup>132</sup> The Inter-American Court has declared, for instance, that "The American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71, par. 123. See, also, I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, par. 275; I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 186; I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, par. 65.

<sup>133</sup> I/A Court H. R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 148; I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 175; I/A Court H.R., *Case of Bámaca Velásquez. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, par. 64.

<sup>134</sup> I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, pars. 169 and 170.

<sup>135</sup> I/A Court H. R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120. Par. 65.

<sup>136</sup> I/A Court H. R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124. Par. 160. In this respect see, also, European Court of Human Rights. *Wimmer v. Germany*, No. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, No. 45100/98, § 129, 8 February 2005, and *Todorov v. Bulgaria*, No. 39832/98, § 45, 18 January 2005.

148. As a preliminary step in its analysis of the aforementioned elements, the Commission points out that a determination as to reasonable time must encompass the time taken from filing of the complaint until a final judgment is issued and that, particularly in criminal matters, the reasonable time must cover the whole proceeding, including any appeals that may be filed.<sup>137</sup> In the instant case, more than 13 years after the events occurred, none of the suspected perpetrators had been indicted and the criminal proceeding against former president Fujimori has seen no progress or concrete results.

149. As to the complexity of the instant case, the Commission finds that with respect to the detention and subsequent forced disappearance of Kenneth Ney Anzualdo Castro, for a long time the State did not take effective steps to seek evidence with which to identify those responsible, despite the fact that it had access to such evidence based on information supplied by the victim's next of kin and his fellow students, as well as from information that was public knowledge, such as investigative reports by journalists and the findings of the Truth and Reconciliation Commission. Furthermore, the IACHR notes that in the proceedings on this petition the State has not demonstrated any degree of complexity in this case that might impede judicial clarification of the circumstances alleged in the petition. Therefore, it cannot plead any possible complexity of the matter to justify the delay in that regard either.

150. As was mentioned above, the IACHR finds that Kenneth Anzualdo's abduction and subsequent disappearance were deeds carried out by agents of the State whose arbitrary and illegal actions in the operation were a dire indication that a forced disappearance had occurred. Such a dire indication required the State prosecutors, police, and other competent authorities to make every effort to conduct an effective search and an efficient investigation befitting the gravity and terrible nature of the events reported; such was not the case.

151. Moreover, as established by the evidence, the petitioners have adopted an active role since the time the first complaint was filed in December 1993. It can be gathered from the testimony given in the case brought before the Office of the Fifth Prosecutor of Callao that Kenneth Ney Anzualdo Castro's next of kin actively provided all the information in their possession for the purpose of identifying the persons responsible for the victim's detention and later forced disappearance; that his family members filed for a writ of *habeas corpus* without success; and that they continued to file complaints with a view to clarifying the circumstances of Kenneth Anzualdo's forced disappearance. Accordingly, the Commission observes that the petitioners and the victim's next of kin have in no way obstructed the investigations; on the contrary, they supplied all the evidence they had and have continued to file complaints and reiterate their demands for justice and clarification of the truth of the matter.

152. As regards the behavior of the judicial authorities, it should be noted that the criminal complaints brought by the family of the victims have also proved ineffective since,

<sup>137</sup>I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 189, citing I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 120; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94; and I/A Court H.R., *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, par. 71.

as yet, they have led neither to the discovery of the whereabouts of Kenneth Ney Anzualdo Castro, nor to the punishment of the persons responsible for his disappearance. Nor has there been an effective remedy to make up for a judicial system that has done virtually nothing or covered up -by omission or failure to conduct a meaningful and effective investigation- the violations of the fundamental rights of the victim and his family. Consequently, the Commission considers that in the instant case the Peruvian judicial authorities flagrantly disregarded the basic principles that should guide forced-disappearance investigations. In fact, in the opinion of the Commission, the Peruvian judiciary did not take all the necessary steps with respect to evidence and promptly arrange for its collection and examination. The Commission finds there is no reasonable justification for the fact that, 13 years afterward, the judicial authorities have still not collected sufficient evidence or analyzed the evidence already produced in the proceedings carried out by the different agencies where investigations were conducted

153. Furthermore, the fact that the Peruvian State has ordered the opening and closure of the investigations on several occasions, and that the record of the proceedings connected with the first criminal complaint lodged in 1993 with the Office of the Fifth Provincial Prosecutor of Callao has been reported missing, are clear indications of the lack of due diligence in the way the investigations have been handled. Additionally, the IACHR notes that while amnesty laws 26.492 and 26.479 remained in force, the investigations in connection with this complaint, though closed without prejudice until new evidence should come to light, were in effect terminated, because said laws made it impossible to proceed with the investigation or prosecute State agents. Therefore, the IACHR considers that, while they remained in force, these laws were a delaying factor in the investigations, a fact attributable to the State.

154. Furthermore, based on the evidence available to the Commission, at no stage in the investigations undertaken were the necessary procedures carried out to elucidate the facts; that is, there is no evidence to show that the initial investigations included a reenactment of events, adoption of effective measures to investigate the existence of clandestine detention centers in the basements of the SIE facilities, or a search for the corpse of Kenneth Ney Anzualdo Castro at that facility. Nor were key persons summoned to give statements, such as SIE personnel, police officers, and other officials on duty at the time of the events, who might have been able to help shed light on the circumstances connected with the disappearance of Kenneth Ney Anzualdo Castro, as reflected in the decision of March 20, 2007, issued by the Office of the Second Special Criminal Prosecutor for Organized Crime before the Superior Court. That decision expressly stated that no meaningful, thorough, and conscientious preliminary investigation "as warranted by a crime against humanity" had been carried out by the police or the state prosecution service in this case, and it ordered a series of procedural measures to be carried out, including deposition of witnesses and a search for relevant documentary evidence.

155. The foregoing indicates that the investigations opened by the State and its judicial branch showed obvious signs of negligence in the collection of evidence, obstruction of justice, and procedural delay. Based on the foregoing, the Commission concludes that the Peruvian State violated the right to a hearing within a reasonable time and to due diligence in the pursuit of the investigations connected with the detention and subsequent forced disappearance of Kenneth Ney Anzualdo Castro. The breaches of



Articles 1, 8(1), and 25 were consummated when the Peruvian State failed to carry out effective investigations and proceedings in the domestic jurisdiction.

**a. Right to clarification and the truth, and the obligation to combat impunity**

156. In this section, the Commission examines the alleged violation of the right to the truth to the detriment of the alleged victim and his next of kin in the context of the violations of the rights to a fair trial and judicial protection. The Commission considers that the individual right of Mr. Kenneth Ney Anzualdo Castro's family to the truth constitutes an obligation undertaken by the Peruvian State as part of the duties and obligations that said country adopted when it became a state party to the American Convention. Those obligations emanate fundamentally from the provisions contained in Articles 1(1), 8, and 25 of said Convention. Thus the case law of the inter-American system has found that the right of access to justice must ensure, within a reasonable period of time, the right of the alleged victims or their next of kin to anything and everything necessary being done to ascertain the truth of the events, and that the responsible parties be punished in the event they be found.<sup>138</sup> Indeed, the Inter-American Court has held that the right to the truth is subsumed into the right of the victim or the next of kin to obtain clarification of the violations and the corresponding responsibility from the competent bodies of the State, by means of the investigation and prosecution provided for in Articles 8 and 25 of the Convention.<sup>139</sup> Specifically with respect to cases of forced disappearance, which constitute continuing violations,<sup>140</sup> the case law of the Inter-American system has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees.<sup>141</sup>

157. Accordingly, in order for the State to discharge its duty adequately to ensure the right of access to justice as well as knowledge of and access to the truth, it must meet its obligation to investigate, prosecute, and, as appropriate, punish those responsible for gross violations of human rights as well as provide reparation for such human rights violations.<sup>142</sup>

158. In that regard, the IACHR notes that the case law of the Inter-American system has reiterated that every person, including the next of kin of victims of gross human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society as a whole must be informed of everything that happened concerning such violations.<sup>143</sup> The foundations of this right are grounded in the conviction

<sup>138</sup> I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 382.

<sup>139</sup> I/A Court H.R., *Case of the Rochela Massacre (Merits and Reparations)*. Judgment of May 11, 2007. Series C No. 163, par. 147..

<sup>140</sup> I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, par. 128.

<sup>141</sup> *Idem*, par. 197.

<sup>142</sup> I/A Court H.R., *Case of the Rochela Massacre (Merits and Reparations)*. Judgment of May 11, 2007. Series C No. 163, par. 193..

<sup>143</sup> I/A Court H. R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, par. 128; I/A Court H. R., *Case of the Plan de Sánchez Massacre. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, par. 97; I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 257.

that knowledge of the truth is one of the most effective ways of preventing the recurrence of gross human rights violations and consolidating a democratic system governed by the rule of law. Moreover, the State has the duty to make all information leading to clarification of the truth available to victims, their next of kin, and society as a whole. This duty includes the obligation to disclose information in the possession of the State as well as to use every means at its disposal to obtain that information.

159. Furthermore, according to Inter-American case law, in cases of gross human rights violations, the positive obligations inherent in the right to the truth demand adoption of institutional mechanisms that enable this right to be realized in as appropriate, participatory, and complete a manner as possible and not encounter any legal or practical obstacles that might render it illusory.<sup>144</sup> Therefore, the IACHR emphasizes the fact that satisfaction of the collective dimension of the right to the truth demands procedural elucidation of the most comprehensive historical truth possible, which includes judicial determination of patterns of joint behavior and of the individual behavior of all the persons who in different ways were involved in such violations, as well as their respective liability. Such an investigation should be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victims or their family or upon their offer of proof.

160. In this regard, the Commission recognizes and values the efforts of Peruvian society in the framework of the Truth and Reconciliation Commission. As the Commission has held in other cases, the Final Report of the Truth and Reconciliation Commission of August 28, 2003, is particularly important since it constitutes a contribution to the clarification of gross human rights violations that occurred over the last two decades in Peru.<sup>145</sup> The scientific and social methods used to investigate the facts, determine patterns of human rights violations, identify and count the victims, prepare a map of violence and burial sites, *inter alia*, entailed the collection of data and evidence that will undoubtedly provide the administration of justice with more tools to solve other specific cases, identify those responsible, and impose the appropriate penalties. They will also enable the victims and Peruvian society to find out what took place, preserve the memory of events for posterity, and uncover the truth.<sup>146</sup>

161. However, according to Article 3 of the aforesaid decree, the Truth and Reconciliation Commission does not have adjudicatory powers and, therefore, is not a substitute for the courts and the Office of the Attorney General. In this regard, the Commission held in a previous case:

"[t]he IACHR considers that despite the important role the Truth Commission played in establishing the facts related to the most serious violations and for promoting national

<sup>144</sup> [A Court H.R., *Case of the Rochela Massacre (Merits and Reparations)*. Judgment of May 11, 2007. Series C No. 163, par. 195.]

<sup>145</sup> The Truth and Reconciliation Commission was created by the President of the Republic of Peru through Executive Order 065-2001-PCM of June 4, 2001, and its name amended by Executive Order 101-2001-PCM. Its mandate included clarification of the process, facts, and liability in connection with the terrorist violence and human rights violations that occurred from May 1980 to November 2000, imputable to terrorist organizations as well as agents of the State; as well as proposing initiatives designed to cement peace and harmony among Peruvians.

<sup>146</sup> IACHR, Report 77/04, Case 11.767, Bernabé Baldeón García, Peru, October 19, 2004.

reconciliation, the functions it performed do not take the place of the judicial process as a method for arriving at the truth. The value of truth commissions is that their creation is not based on the premise that there will be no trial, but on their being seen as a step towards restoring the truth and, in due course, justice."<sup>147</sup>

162. According to the evidence in the record before the IACHR in this particular case, at the time of this writing more than 13 years have passed since the forced disappearance of Kenneth Anzualdo, yet his whereabouts or the circumstances of his disappearance have not been judicially determined, and, based on the assumption that he is dead, his mortal remains have still not been delivered to his family, nor has a determination been reached as to what happened to them in the basement of the SIE facility. Furthermore none of the persons suspected of carrying out his disappearance have been indicted on criminal charges. In the opinion of the IACHR, the foregoing constitutes a situation of impunity vis-à-vis the detention and forced disappearance of Kenneth Ney Anzualdo Castro on December 16, 1993.

163. The Commission notes that this failure to prosecute the perpetrators of the violations analyzed here serves to prolong the suffering caused by the abridgment of the victim's fundamental rights, and that the State is duty-bound to provide an adequate judicial response to establish the identity of those responsible for the design and implementation of the policy of forced disappearance that framed the events in this case. Furthermore, the State has the obligation to prosecute and punish the perpetrators of this disappearance. In the instant case, the testimonies in the record before the Commission that were given to the Truth and Reconciliation Commission by Felix Anzualdo Vicuña serve reveal the pain and anguish caused both to Kenneth Ney Anzualdo Castro and to his next of kin by the violations committed by members of the Peruvian State, who have inflicted profound mental and psychological injuries whose aftereffects persist to this day.<sup>148</sup>

164. In addition to the foregoing, it is necessary to consider the impact inflicted on the family upon learning how young Kenneth came to be disappeared in the basement of the SIE, where incinerators had been set up to wipe out any trace of persons abducted in those clandestine detention centers outfitted by SIE agents, as reflected in the evidence mentioned in the section on proven facts.

165. The Commission considers it essential to stress that if the truth of the facts in this case are kept from coming to light, if those responsible for this disappearance are not punished, and if the judicial system continues to do nothing and covers up—by omission or failure to conduct a meaningful and effective investigation into the violations of the fundamental rights of the injured party—then impunity will be a foregone conclusion and will certainly prompt a recurrence of the violations found.

<sup>147</sup> IACHR, Report 94/03, Case 11.015, Hugo Deodato Juárez Cruzatt *et al.* (Miguel Castro Castro Prison), Peru, October 23, 2003. See, also, Report 37/00, Case 11.481, *Monsignor Oscar Arnulfo Romero y Galdámez*, El Salvador, April 13, 2000, par. 149.

<sup>148</sup> CVR, Record of Testimony N° 100079 offered by Felix Vicente Anzualdo Vicuña and Testimony to the Truth and Reconciliation Commission by Mr. Felix Anzualdo Vicuña at the Fourth Session of June 22, 2002. Available online at: [http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans\\_lima04f.php](http://www.cverdad.org.pe/ingles/apublicas/audiencias/trans_lima04f.php) Consulted May 11, 2007.

166. In conclusion, the Commission finds that domestic procedures and proceedings have not provided effective recourse to ensure access to justice and the right to the truth, investigation and punishment of those responsible, and full reparation for the consequences of the violations. Based on the foregoing, the IACHR concludes that the State is responsible for violation of Articles 8 and 25 of the Convention, in conjunction with Article 1(1) thereof, to the detriment of the victim and his next of kin.

**6. The State is responsible for violation of the right of Kenneth Ney Anzualdo Castro under Article 3 (right to *juridical personality*) of the American Convention in conjunction with Article 1(1) of that instrument**

167. The IACHR considers it relevant to reiterate that forced disappearance is a complex offense and a violation of multiple rights that requires different treatment from other human rights violations, as well as to mention that it is conscious of the fact that the Inter-American Court established in its case law that the Inter-American Convention on Forced Disappearance of Persons does not refer expressly to juridical personality among the elements that characterize the crime of forced disappearance of persons and that it was not admissible "in these circumstances, to invoke an alleged violation of the right to juridical personality or other rights embodied in the American Convention."<sup>149</sup> On this issue, the Commission considers it correct and necessary to include an analysis of the alleged violation of Article 3 of the Convention in the aforementioned concept of multiple violations of human rights to which a case of forced disappearance gives rise.

168. Article 3 of the American Convention provides that every person has the right to recognition as an individual under the law. This right is a fundamental requirement for the enjoyment of all basic freedoms, inasmuch as this right grants the individual recognition under the law. The right to juridical personality has several dimensions: the right to exercise and enjoy rights; the capacity to take on obligations; and standing. It was determined in the *travaux préparatoires* for the Universal Declaration of Human Rights (hereinafter "the Universal Declaration") that this right ensures that "every human being has the right to enjoy and exercise their rights, assume contractual obligations and be represented in legal actions."<sup>150</sup> In the *travaux préparatoires* for the Universal Declaration, one commentator mentioned that legal personality "encompasses the fundamental rights referring to a person's legal standing, which are not explicitly mentioned in the subsequent Articles of the Declaration."<sup>151</sup> By the same token, in the process for the adoption of the American Convention on Human Rights, one of the delegates noted that this right "includes the principle that all human beings should be recognized as a person under the law in all the states in which they act, move, and live."<sup>152</sup>

<sup>149</sup> I/A Court H.R., Case of *Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, par. 180 & 181 (quotes omitted).

<sup>150</sup> Cf. Richard B. Lillich, "Civil Rights", in Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press, Oxford, 1988, p. 131.

<sup>151</sup> *Ibid.*

<sup>152</sup> General Secretariat of the Organization of American States, Inter-American Specialized Conference on Human Rights, Proceedings and Documents. OEA/Ser.K/XVI/1.2. San Jose, Costa Rica November 2 to 22, 1969, pgs. 157-158.

169. The Commission considers that the connection between forced disappearance and violation of the right to juridical personality has to do with the fact that the precise object of forced disappearance is to remove the individual from his due protection; the aim of those who carry it out is to operate outside the law, conceal any evidence of the crime, and escape punishment, in addition to the clear and deliberate intention of eliminating any possibility of the person bringing any legal action to assert his or her rights.

170. The IACHR finds that disappearance, as a violation of multiple rights, is designed to, and actually does, annul the victim's legal personality, its trademark being that the ultimate fate of victims remains unknown even though they are presumed to have been executed prior to concealment of their bodies. The Commission's experience shows that a number of methods have been used to do away with the detainee-disappeared person. The aim is to keep the disappeared person out of the real and legal world, conceal their ultimate fate, and deny the disappeared person, while they are alive, or their families, the ability to exercise any right. This aspect differentiates forced disappearance from extrajudicial execution.<sup>153</sup>

171. The foregoing shows that the basic characteristic of forced disappearance of persons is that each individual case is part of a deliberate and conscious policy to deny detainees access to the legal system and institutions.<sup>154</sup>

172. The violation of the right to legal personality that comes with forced disappearance has reached such a point that several states in the region have had to adopt specific laws to distinguish this phenomenon from extrajudicial execution. The State prevents living persons from exercising their rights and obligations because the State denies their final fate. For example, in the case of detainees-disappeared persons who remain alive, the State denies the right of access to a judge if they are in detention, and in the case of detainees-disappeared persons who had been executed, it denies the consequential rights of the deceased persons' next of kin, such as, rights of inheritance, for instance, which are obstructed by the indeterminate legal status of the detainee-disappeared person.

173. In the instant case, the aim of the persons who perpetrated the forced disappearance of Kenneth Ney Anzualdo Castro was to operate outside the law, sow fear, conceal all evidence of their crimes, and escape any punishment. The Commission finds that through the victim's disappearance the perpetrators sought to create a legal vacuum, which was created by the State's refusal to recognize that Kenneth Ney Anzualdo Castro was in its custody, deliberately making it impossible for the victim to exercise his rights and keeping his family ignorant of his whereabouts and situation. Furthermore, when his next of kin applied for a writ of *habeas corpus*, it was rejected on the grounds that there was a criminal investigation under way, which was closed a short time thereafter without producing any results in terms of establishing the whereabouts of Mr. Anzualdo Castro or the circumstances of his disappearance. Therefore, the disappearance resulted in the

---

<sup>153</sup> IACHR, *Annual Report 1986-87*, Chapter V: II. Inter-American Convention on Forced Disappearance of Persons.

<sup>154</sup> *Ibid.*

completeneigationof the victim's inherent rights as a human being, in order to remove his due protection by denying his right to be recognized as a person in the eyes of the law.<sup>155</sup>

174. In addition to the foregoing arguments, the Commission relies on other international instruments to support its view that the forced disappearance of Kenneth Ney Anzualdo Castro violated his right to juridical personality. The Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the United Nations General Assembly in December 1992, states that "Any act of enforced disappearance places the persons subjected thereto outside the protection of the law [...].It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law [...]."<sup>156</sup>

175. Thus, the right to juridical personality is at the very core of the concept of recognition as a person in the eyes of the law, determining their "actual existence" in society and in the eyes of the State, and enabling them to hold rights and obligations, exercise their rights, and have "standing."

176. Based on the factual and legal arguments set forth above, the Commission finds that Peru violated Kenneth Ney Anzualdo Castro's right to legal personality enshrined in Article 3 of the American Convention.

#### **7. Breach of the duty to adopt domestic legal provisions set forth in Article 2 of the American Convention**

177. The States Parties to the American Convention have undertaken to observe and ensure all the rights and freedoms recognized in the Convention for the persons subject to their jurisdiction and to adopt such legislative or other measures as may be necessary to permit the enjoyment and exercise of those rights and freedoms.

178. Article 2 of the American Convention provides:

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

179. Firstly, the Commission deems it relevant to mention that the Inter-American Court examined in its case law the content and scope of amnesty laws 26.479 and 26.492, and found that they were "incompatible with the American Convention on Human Rights and, consequently, lack[ed] legal effect."<sup>157</sup> In particular, it follows from the above-cited case law that "[e]nactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is *per se* a violation of the

<sup>155</sup> See IACHR, Report 11/98 (Case 10.606 – Guatemala), par. 57; Report 55/99 (Cases 10.815, 10.905, 10.981, 10.995, 11.042, 11.136 – Peru), par. 111; Report 56/98 (Cases 10.824, 11.044, 11.124, 11.125, 11.175 – Peru), par. 110; Report 3/98 (Case 11.221 – Colombia), par. 64; Report 30/96 (Case 10.897 – Guatemala).

<sup>156</sup> Declaration on the Protection of all Persons from Enforced Disappearance, UN General Assembly Resolution 47/133, 18 December, 1992, Article 1.2.

<sup>157</sup> I/A Court H.R., Cases of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, pars. 41 to 44 and operative paragraph 4.

Convention for which the State incurs international responsibility [and] given the nature of the violation that amnesty laws No. 26.479 and No. 26.492 constitute, the effects of the decision [...] are general in nature."<sup>158</sup>

180. Secondly, the Commission notes that, as the case law of the Inter-American Court has found, *ab initio* incompatibility of the amnesty laws with the Convention has generally been accepted in Peru ever since it was pronounced by the Court under the judgment rendered in the *case of Barrios Altos*; that is, the State has suppressed any effects that such laws could have had.<sup>159</sup> Indeed, in monitoring compliance with the judgment on reparations issued in the *Barrios Altos* case, the Inter-American Court noted:

[...] b) enforcement of the Court's mandate in its interpretation of the Judgment on the Merits of September 3, 2001 in the instant case "concerning the meaning and scope of the declaration of ineffectiveness of Laws No. 26,479 and [No] 26,492" (*operative paragraph 5(a) of the Judgment ordering Reparations of November 30, 2001*).<sup>160</sup>

181. In this regard, and without prejudice to the acknowledgement that the Peruvian state has taken a number of steps to repeal the amnesty laws enacted during the previous decade, the Commission has already stressed the need for the State to ensure the removal of those laws from its statute books and, in that way, formally ensure observance of the obligation to adapt its domestic laws established at Article 2, inasmuch as amnesty laws 26,479 and 26,492 lack any legal effect because they are contrary to the Convention. In spite of the foregoing, the IACHR notes that in the *Case of La Cantuta*, the Inter-American Court held that although during the time in which the amnesty laws were applied in said case "the State breached its obligation to adjust its domestic law to the Convention pursuant to Article 2 thereof, in connection with Articles 4, 5, 7, 8.1, 25 and 1(1) of the Convention, to the detriment of the victims' relatives,"<sup>161</sup> the Court found insufficient evidence to show that the State continued to breach its obligation, given that it had adopted "appropriate measures to eliminate the effects that the amnesty laws might have had at some times."<sup>162</sup> Therefore, "such 'laws' have not been capable of having effects, nor will [they] have them in the future."<sup>163</sup>

182. In this same vein, the Commission finds, in keeping with the above-mentioned precedent in the *Case of La Cantuta*, that the effect of enacting the amnesty laws was that while they remained in force it was impossible to pursue any investigation against

<sup>158</sup> I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, par. 187. See, also, *Barrios Altos Case. Interpretation of the Judgment on the Merits*. (Art. 67 American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, par. 18 and operative paragraph 2.

<sup>159</sup> I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, par. 187.

<sup>160</sup> *Ibid.*

<sup>161</sup> I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, par. 189.

<sup>162</sup> I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, par. 189.

<sup>163</sup> I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, par. 189.

State agents owing to the amnesty provisions. Specifically, the IACHR notes that at the time that the aforesaid legislation was passed the investigations into the disappearance of Kenneth Anzualdo were closed without prejudice; however, the amnesty laws were a legal obstacle that prevented the continued pursuit of lines of investigation aimed at clarifying the circumstances of his disappearance. Thus, the IACHR considers that the aforesaid laws were a factor that contributed to the delay in the investigations, which, more than 13 years after the events, have failed to produce concrete results in the instant case and, consequently, the crimes surrounding young Kenneth's disappearance have gone unpunished. In sum, while they were in force the amnesty laws amounted to an obstacle to the prompt and effective investigation, prosecution, and punishment of those thought to be responsible for the violations, and to a breach by the State of its obligation to ensure rights, to the detriment of the victim's next of kin.

183. Therefore, the Commission concludes that, for the period that the amnesty laws were in force, the Peruvian State violated its obligation under Article 2 of the Convention to ensure the compatibility of its domestic laws with said treaty, in connection with Articles 4, 5, 7, 8, 25, and 1(1) thereof.

**8. Breach by the State of its duty under Article 1(1) of the American Convention (Obligation to Respect Rights).**

184. As the Commission mentioned above, as a consequence of its violation of the rights recognized at Articles 3, 4, 5, 7, 8, and 25 of the American Convention, the State breached the obligation set forth in Article 1(1) of the Convention.

185. Article 1(1) of the Convention:

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

186. In this respect, the Court has ruled:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention; thus, any impairment of those rights that can be attributed, under the rules of international law, to the act or omission of any public authority constitutes an act imputable to the State and which entails its responsibility as established in the Convention.

187. According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Therefore, whenever a State organ or official, or a public entity violates one of those rights, this constitutes a failure in the duty to respect rights enshrined in that article.

188. This conclusion is independent of whether the organ or official has contravened provisions of internal law or overstepped the limits of his authority, since it is a principle of international law that a State is responsible for the acts of its agents



undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.<sup>164</sup>

189. In this regard, the Inter-American Court has found that, based on Article 1(1) of the American Convention:

... the State is under the obligation to respect the rights and liberties recognized therein and to organize public authority in such a way as to ensure to all persons under its jurisdiction the free and full exercise of human rights. The above obligation applies independently of whether those responsible for violation of said rights are agents of public authority, private individuals, or groups of individuals, as according to the rules of International Human Rights Law, action or omission by any public authority is an act attributable to the State, one that involves its responsibility under the terms set forth in that Convention.<sup>165</sup>

190. As a result of the violation of the rights recognized in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, the State breached its obligation to ensure the rights and freedoms enshrined in that treaty and to ensure to all persons under its jurisdiction the free and full exercise of those human rights.<sup>166</sup> Accordingly, the Peruvian State has the duty to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. According to the Inter-American Court, the above obligation applies independently of whether those responsible for violation of said rights are agents of public authority, private individuals, or groups of individuals,<sup>167</sup> as according to the rules of International Human Rights Law, action or omission by any public authority is an act attributable to the State, one that involves its responsibility under the terms set forth in that Convention.<sup>168</sup>

191. Also grounded in the foregoing is the obligation for States to use all the means available to them, in a diligent manner, to conduct a meaningful and effective investigation within a reasonable time, as the basis for indictment, elucidation of the facts, trial and punishment of the direct perpetrators and those who instigate any violation of

<sup>164</sup> I/A Court H. R., *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, par. 163; I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, par. 154; I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, par. 178; and I/A Court H.R., *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C No. 22, par. 56.

<sup>165</sup> I/A Court H. R., *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, par. 163.

<sup>166</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 142; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 210; I/A Court H.R., *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C No. 22; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, pars. 175 and 176; and I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, pars. 166 and 167.

<sup>167</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 142; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 210; and I/A Court H.R., *The "Panel Blanca" Case (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, par. 174.

<sup>168</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 142; I/A Court H. R., *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, par. 163; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 210; I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, par. 154; and I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, par. 178.

rights protected in the American Convention. In this respect, the Inter-American Court has clearly stated that the obligation to investigate must be fulfilled:

in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government.<sup>169</sup>

192. The IACHR has noted that in Peru there existed a pattern of forced disappearances that led to the illegal and arbitrary detention and forced disappearance of Kenneth Ney Anzualdo Castro. The foregoing occurred at a time when the State had the obligation to prevent and investigate what was occurring. As the Inter-American Court has held:

The obligation to investigate must be fulfilled in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government.<sup>170</sup>

193. In this case, the IACHR found that serious obstacles not only were put up by the officials involved in the detention and the disappearance of Kenneth Ney Anzualdo Castro but also stemmed from the negligence of the judicial authorities with whom responsibility lay to ascertain the whereabouts of the victims and punish those responsible. Furthermore, the violations identified in the instant report of the rights to personal liberty and security, to life, to physical, mental and moral integrity, and to a fair trial and judicial protection, perpetrated to the detriment of Kenneth Ney Anzualdo Castro, are attributable to the State, which had the duty to observe and ensure those rights. Consequently, the Peruvian State is responsible for breach of Article 1(1) and 2 in connection with Articles 3, 4, 5, 7, 8, and 25 of the American Convention, to the detriment of Kenneth Ney Anzualdo. Furthermore, the State failed to discharge its obligation to ensure the rights of the next of kin of Kenneth Ney Anzualdo recognized in Article 1(1) and 2 of the American Convention, in conjunction with Articles 5, 8, and 25 thereof.

#### **9. Breach of the obligations contained in Article I of the Inter-American Convention on Forced Disappearance of Persons**

194. The Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, provides that the systematic practice of the forced disappearance of persons constitutes a crime against humanity. The above-cited instrument includes basic elements that distinguish forced disappearance from other crimes, such as abduction, illegal detention or abuse of authority. Article II of the aforesaid Convention provides:

<sup>169</sup> I/A Court H. R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 144; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 212; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 226; and I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, par. 188.

<sup>170</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, par. 212; *The "Street Children" Case (Villagrán Morales et al.)*, *supra*, par. 226; *Godínez Cruz Case*, *supra*, par. 188; and *Velásquez Rodríguez Case*, *supra*, par. 177.

[...] forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.<sup>171</sup>

195. For its part, in Article I of the Inter-American Convention on Forced Disappearance of Persons, States Parties undertake:

- a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;
- b) 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;
- c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; and
- d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

196. On this topic, the IACHR feels that it is important to make a number of observations. In the first place, when it ratified the Inter-American Convention on Forced Disappearance of Persons on February 13, 2002, the Peruvian State made the commitment set forth in Article I(a) of that instrument "not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees." In the second place, the Commission considers it crucial to draw attention to the fact that forced disappearance is a crime of a continuing or permanent nature. Indeed, its effects continue in time as long as the fate or whereabouts of the victim have not been determined. This circumstance puts the state in a situation of permanent infringement of its international obligations. Therefore, as mentioned previously, the Inter-American Convention on Forced Disappearance of Persons is wholly applicable to the instant case.<sup>172</sup>

197. It is important also to bear in mind that the way in which the forced disappearance of Kenneth Anzualdo occurred was consistent with a systematic pattern of human rights violations that existed in Peru at that time, as the Commission, the Inter-American Court in its case law, and the CVR in its final report have established.<sup>173</sup>

198. In the instant case, the IACHR finds that the Peruvian State has failed to fulfill the commitments set forth in Article I of the Inter-American Convention on Forced Disappearance of Persons since it has been determined that State agents were involved in

<sup>171</sup> Inter-American Convention on Forced Disappearance of Personas, adopted at Belém do Pará, Brazil, on June 9, 1994, at the Twenty-Fourth Regular Session of the General Assembly (Entry into force: March 28, 1996), Article II.

<sup>172</sup> I/A Court H.R., *Case of Trujillo Oroza. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, par. 95.

<sup>173</sup> I/A Court H. R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 54.1 – 54.4.

the detention and subsequent disappearance of Kenneth Ney Anzualdo Castro, and that there was lack of diligence in the investigations to establish the circumstances of the victim's disappearance and his whereabouts, or to find his mortal remains. In particular, it follows from the evidence submitted to the Commission that in none of the investigations conducted by the various prosecutor's offices were the necessary measures adopted to elucidate the facts; that is, the relevant investigative procedures to clarify the circumstances of Mr. Anzualdo's forced disappearance were not brought up to date. The Commission also notes an evident procedural delay, given that more than 13 years after the events the culprits have not been prosecuted and punished, despite telling evidence and indicia.

199. Accordingly, the Commission concludes that through the forced disappearance of Kenneth Ney Anzualdo Castro the Peruvian State committed a violation of Article I of the Inter-American Convention on Forced Disappearance of Persons and of the rights recognized in the American Convention on Human Rights as set out above.

### **VIII. REPARATIONS AND COSTS**

200. Based on the alleged facts in the instant application and the case law issued by the Inter-American Court establishing that "it is a principle of International Law that any violation of an international obligation that has caused harm, gives rise to an obligation to provide adequate reparation [...]"<sup>174</sup>, the IACHR proffers to the Court its position that the Peruvian State is liable for reparations and costs as a result of its responsibility for the violations committed against the injured party.

201. The Inter-American Commission shall circumscribe the following discussion to the general criteria of reparations and costs, which it finds the Court should apply in this case, as provided by the rules of the court granting autonomous representation to the individual. The Commission is aware that the injured party is entitled to assertion of its claims, in accordance with Article 63 of the American Convention and Articles 23 and related provisions of the Rules of Procedure of the Court. In the event that the injured party does not avail itself of this right, the IACHR requests the Court to grant it the opportunity in the proceedings to quantify the appropriate claims.

#### **A. Obligation to provide reparation and adopt measures to remedy breach.**

202. Article 63(1) of the American Convention provides:

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

---

<sup>174</sup> I/A Court H.R., Corte IDH, Case of the *Gómez Paquiyauri Brothers*, Judgment of July 8, 2004. Series C No. 110, paragraph 187; *Myrna Mack Chang Case*, Judgment of November 25, 2003. Series C No. 101, par. 141; *Bulacio Case*, Judgment of September 18, 2003. Series C No. 100, par. 72; *Juan Humberto Sánchez Case*, Judgment of June 7, 2003. Series C No. 99, par. 147.

203. This provision reflects a norm of customary law "which constitutes one of the essential principles of contemporary international law of State responsibility."<sup>175</sup> Reparation of the harm caused by breach of an international obligation requires, to the extent possible, full restitution (*restitutio in integrum*), which consists of restoring a situation back to the way it was prior to the violation. Should this not be possible, the Court must order measures to ensure respect of the violated rights and redress the consequences that gave rise to the violations, through payment of compensatory damages.<sup>176</sup> Reparations serve one additional purpose, which is no less essential: to avoid and stop future violations.

## B. Measures of reparation

204. The Court has stated that measures of reparation are designed to do away with the effects of violations that have been committed.<sup>177</sup> Said measures encompass different ways in which a State can confront the international responsibility it has incurred which, pursuant to international law, consist of measures of restitution, compensation, rehabilitation, satisfaction and non repetition.<sup>178</sup>

### 1. Measures of Compensation

205. The Court has established basic standards to guide fair redress aimed at economically compensating, adequately and effectively, for the damages suffered as a result of human rights violations.<sup>179</sup>

#### i. Material Damages

206. The Court, in its case law on reparations, has consistently held that material damages include consequential damages or economic loss (*danmum emergens*) and lost wages to both the victims and their immediate family members,<sup>180</sup> as is also the case with the non pecuniary, that is, psychological and emotional damages such as pain and suffering, known as 'moral' damages.

<sup>175</sup> I/A Court H.R., *Carpio Nicolle et al Case*. Judgment November 22, 2004. Series C No. 117, par. 86; I/A Court H.R., *Case of Plan de Sánchez Massacre*. Judgment of November 19, 2004. Judgment November 19, 2004. Series C No. 116, par. 52; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, par. 139.

<sup>176</sup> I/A Court H.R., *Gómez Paquiyauri Brothers Case*. Judgment of July 8, 2004. Judgment of July 8, 2004. Series C No. 110, paragraph 189; *"19 Merchants" Case*. Judgment of July 5, 2004. Series C No. 109, par. 221; *Molina Theissen Case. Reparations (Art. 63.1 of the Inter-American Convention on Human Rights)*, Judgment of July 3, 2004, Series C N° 108, par. 42.

<sup>177</sup> I/A Court H.R., *Carpio Nicolle et al Case*. Judgment November 22, 2004. Series C No. 117, par. 89; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, par. 141; I/A Court H.R., *Gómez Paquiyauri Brothers Case*. Judgment of July 8, 2004. Series C No. 110, par. 190.

<sup>178</sup> See United Nations, *Final Report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law*, E/CN.4/Sub2/1990/10, July 26, 1990. Also see I/A Court H.R., *Blake Case. Reparations (Art. 63.1, American Convention on Human Rights)*. Judgment of January 22, 1999. Series C N° 48, par. 31; *Suárez Rosero Case, Reparations (Art. 63.1, American Convention on Human Rights.)*, Judgment of January 20, 1999. Series C N° 44, par. 41, and I/A Court H.R., *Castillo Páez Case. Reparations (Art. 63.1, American Convention on Human Rights)*. Judgment of November 27, 1998. Series C N° 43.

<sup>179</sup> See I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al*, par. 204; *Case of the "White Panel" (Paniagua Morales et al). Reparations*, par. 80; *Castillo Páez Case. Reparations*, par. 52 and *Garrido and Baigorria Case. Reparations (Art. 63.1 American Convention on Human Rights)*. Judgment of August 27, 1998, Series C N° 39, par. 41.

<sup>180</sup> I/A Court H.R., *Tibi Case*. Judgment of September 7, 2004. Series C No. 114, par. 237; I/A Court H.R., *Caracazo Case. Reparations (Art. 63.1 American Convention on Human Rights)*. Judgment of August 29, 2002, Series C No. 95; and I/A Court H.R. *Hilaire, Constantine and Benjamin et al Case*. Judgment of June 21, 2002. Series C No. 94.

207. Consequential damage has been defined as the direct and immediate consequence of the violations on property or assets. In this concept, the adverse effect on property arising immediately and directly from events pertaining to the expenses covered by the injured party in pursuing justice,<sup>181</sup> with relation to, in this case, the disappearance of their loved one.

208. Furthermore, lost wages are defined as the failure to earn income or collect benefits that one has ceased to obtain because of the forced disappearance of the student Anzualdo Castro and that this can be quantified based on particular measurable and objective indicators.<sup>182</sup>

209. Without prejudice to claims that may be brought up at the appropriate time in the proceedings by the representatives of the victims, the IACHR requests the Court to establish an appropriate amount of compensation under the principle of equity for consequential damages and lost wages, availing itself of its broad discretion in this area.

## ii. Immaterial Damages

210. Regarding immaterial damage, the Court has held:

[...] it may encompass both suffering and distress caused to direct victims and their loved ones, the impairment to things of value that are very significant to persons, as well as non pecuniary disruption in the conditions of existence of the victim and his or her family. Since it is impossible to attach a precise monetary equivalent to immaterial damage, for purposes of full reparation to victims, it can only be the subject of compensation, and this could be in either one of two ways. The first way is by means of payment of an amount of money or delivery of goods or services that can be assessed in monetary terms, which shall be left to the discretion of the Court to decide under the principle of reasonableness and equity. And the second way, by means of performance of acts or works of public scope and repercussion whose effects are for example the preservation of the memory of the victims, recognition of their dignity, consolation of surviving family members or transmission of a message of official reprobation of the violations of the human rights involved and a pledge to make efforts to prevent them from recurring.<sup>183</sup>

211. In the instant case, the immaterial damage stemming from the disappearance of the victim is obvious, as are the harmful consequences of the denial of justice to his next of kin. It is presumable that the injured party has been plagued with intense psychological pain, anxiety, distress and disruption to the endeavors of their lives as a result of the actions of the State and the inability to obtain justice within a reasonable period of time as well as the respective punishment of those involved in the crimes that gave rise to the case *sub judice*.

## 2. Measures of Satisfaction and Guarantees of Non Repetition

<sup>181</sup> I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C N° 42, par. 147; *Aloeboetoe et al Case. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C N° 15, par. 50.

<sup>182</sup> *Ibidem*.

<sup>183</sup> I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, par. 80; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, par. 155; Also see, I/A Court H.R., *Carpio Nicolle et al Case*. Judgment November 22, 2004. Series C No. 117, par. 117.

212. Satisfaction has been defined as any measure that the perpetrator of a violation must adopt under international instruments or customary law, whose purpose is to acknowledge the commission of the illicit act.<sup>184</sup> Satisfaction is consummated once three acts have been performed, usually taken as a whole: apology, or any other gesture to show acknowledgement for perpetrating the act in question; prosecution and punishment of the culprits and taking steps to avoid that the harm is repeated.<sup>185</sup>

213. In this regard, the IACHR believes that among the measures of reparation, the Peruvian State must take any measures necessary to acknowledge its international responsibility for the alleged violations in the case by means of a public apology to the victim and his next of kin, in consultation with the latter and intended to preserve the memory of the victim and events. Moreover, it is of the utmost importance that the State conduct a comprehensive, impartial, effective and prompt investigation into the facts in order to identify and punish all persons responsible for their involvement in planning and carrying out the abduction and forced disappearance of Kenneth Ney Anzualdo Castro. Accordingly, the State must avail itself of all means necessary to investigate, identify and disclose the whereabouts of Mr. Kenneth Ney Anzualdo, or his remains, as the case may be. To the extent possible, the State shall deliver his remains to his next of kin and should this not be possible, provide them with corroborated and convincing information regarding the whereabouts thereof.

### C. Beneficiaries of due reparation from the State

214. Article 63(1) of the American Convention demands reparation for the consequences of a violation and "payment of fair compensation to the injured party." Persons entitled to said compensation are usually those directly harmed by the events in the violation in question.

215. In view of the nature of the instant case, the injured party or beneficiaries of the reparations that may be ordered by the Court as a result of the human rights violations perpetrated by the Peruvian State are the next of kin of Kenneth Ney Anzualdo Castro. Pursuant to the information provided by the injured party, said immediate family members would be: Felix Vicente Anzualdo Vicuña, father; Iris Isabel Castro Cachay de Anzualdo - deceased on October 26, 2006- mother; and siblings Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro.

### D. Costs and Expenses

216. Pursuant to consistent case law of the Court, costs and expenses are considered to be included under the concept of reparation set forth in Article 63(1) of the American Convention, inasmuch as any endeavors to appear before the courts of international justice undertaken by the injured party, directly entitled beneficiaries or their representatives, involve expenses and obligations of an economic nature that must be compensated.<sup>186</sup> Moreover, the Court has ruled that the costs to which Article 55.1(h)

<sup>184</sup> Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, pg. 208.

<sup>185</sup> *Idem*.

<sup>186</sup> I/A Court H.R., *Carpio Nicolle et al Case*. Judgment November 22, 2004. Series C No. 117, par. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, par. 115; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, par. 177.

refers in the Rules of Procedure of the Court also cover necessary and reasonable expenses to bring a case before the enforcement bodies of the American Convention, with such expenses including the honoraria of those who provide legal assistance.

217. The Inter-American Commission requests the Court, once it has heard the injured party, to order the Peruvian State to pay duly supported costs and expenses of the injured party.

## **IX. CONCLUSIONS**

218. Based on all of the arguments set forth in this application, the Commission requests the Inter-American Court to find and declare the State's international responsibility to the detriment of Kenneth Ney Anzualdo Castro, for violation of the right to recognition of juridical personality, the right to life, humane treatment, personal liberty, a fair trial and judicial protection enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the provisions of Articles 1(1) and 2 of the aforesaid international instrument and Article I of the Convention on Forced Disappearance. By the same token, find and declare the State responsible for violation of the right to humane treatment, a fair trial and judicial protection enshrined in Articles 5, 8 and 25 of the Convention to the detriment of the victim's first of kin and in connection with the general obligation to respect and ensure in Article 1(1) and the duty to adopt measures of domestic law as provided in Article 2 of the Convention.

## **X. REQUEST FOR RELIEF**

219. Based on the conclusions in this case, the Inter-American Commission respectfully requests the Court to order the Peruvian State to:

- a. Acknowledge its international responsibility for the violations alleged in case 11.385, Kenneth Ney Anzualdo Castro, in a public statement of apology to the victim and his next of kin, in consultation with the latter, in order to preserve his memory.
- b. Conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify and punish all persons responsible for planning and carrying out the acts connected with the abduction and forced disappearance of Kenneth Ney Anzualdo Castro.
- c. Adopt all necessary measures to investigate, identify and disclose the whereabouts of Mr. Kenneth Ney Anzualdo, or the location of his remains, as the case may be. To the extent possible, the State shall deliver the remains of the victim to his next of kin and, should that not be possible, provide corroborated and convincing information regarding the whereabouts thereof.
- d. Adopt all measures necessary to adequately provide reparation and mitigation for the harm inflicted upon the victim's next of kin, including moral and material damages.



- e. Cover legal fees and expenses defrayed by the victim's next of kin and their representatives in bringing forth this case in domestic courts, as well as those arising from bringing the case in the Inter-American system.

## **XI. SUPPORTING EVIDENCE**

### **A. Documentary evidence**

220. In support of the arguments of law and fact set forth in the instant application, the Commission attaches hereto the documentary evidence listed hereunder:

**APPENDIX 1:** IACHR, Report on Admissibility and Merits N° 85/07, Case 11.385, Kenneth Ney Anzualdo Castro of October 16, 2007. Appendix 1.

**APPENDIX 2:** Case file before the Inter-American Commission.

**ANNEX 1:** Supreme Court of Justice of the Republic, First Transitory Chamber, Extradition Case File No 02-2006, Amendment to Request for Extradition, June 21, 2006, Lima.

**ANEXO 2:** Office of the Attorney General, Office of the Fifth Provincial Prosecutor of Callao, Decision to close investigation of June 3, 1994.

**ANEXO 3:** Office of the Fifth Provincial Prosecutor of Callao, statement of Santiago Cristóbal Alvarado Santos, January 14, 1994.

**ANNEX 4:** Relevant portions of the book *Muerte en el Pentagonito. Los cementerios secretos del Ejército Peruano*, by Ricardo Uceda, Ed. Planeta, Lima, 2004.

**ANNEX 5:** Supreme Court of Justice of the Republic, First Transitory Chamber, Extradition Case File No 02-2006, Amendment to Request for Extradition, June 21, 2006, Lima.

**ANNEX 6:** Supreme Court of Justice of the Republic, Office of the Investigating Magistrates of the Supreme Court, Order to open investigation. File N° 45-2003 A.V., January 5, 2004.

**ANNEX 7:** Copy of record of proceedings for the habeas corpus petition filed by Felix Vicente Anzualdo Vicuña for Kenneth Ney Anzualdo Castro.

**ANNEX 8:** Motion to appeal dated February 22, 1994, filed with the Sixth Court for Criminal Matters of Lima.

**ANNEX 9:** Office of the Attorney General, Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao, Official Letter No 335-03-OA-MP-5ta.FPPC., December 31, 2003.

- ANNEX 10:** Office of the Attorney General, Office of the First Superior Prosecutor of Callao, Complaint No 227-93-III, Appeal submitted, date of filing, October 27, 1994.
- ANNEX 11:** Office of the Fifth Provincial Prosecutor of Callao, investigation file with intake number 227-93-III.
- ANNEX 12:** Law N° 26.479 granting general amnesty to military, police and civilian personnel for a variety of instances, in Official Gazette El Peruano on June 15, 1995.
- ANNEX 13:** Law N° 26.492 enacted on June 30, 1995 and published in the Official Gazette El Peruano on July 2, 1995.
- ANNEX 14:** Motion to reopen investigations into the abduction and forced disappearance of Kenneth Ney Anzualdo Castro and Martin Roca Casas. Intake Desk of the Office of the Attorney General, Office of the Special Prosecutor on Forced Disappearances and Extrajudicial Executions, filed on October 10, 2002.
- ANNEX 15:** Office of the Attorney General, Office of the Provincial Special Prosecutor on Forced Disappearances, Extrajudicial Executions and Clandestine Graves, Decision of April 13, 2005.
- ANNEX 16:** Office of the Attorney General, Decision of the Office of the Fourth National Prosecutor for Criminal Matters before the Superior Court dated July 6, 2005.
- ANNEX 17:** Office of the Attorney General, Office of the Fifth Supra-Provincial Prosecutor for Criminal Matters, Decision of November 15, 2006.
- ANNEX 18:** Office of the Attorney General, Office of the Fifth Supra-Provincial Prosecutor for Criminal Matters of Lima, Motion for reconsideration. Received on November 28, 2006.
- ANNEX 19:** Office of the Attorney General, Office of the Second Special Superior Prosecutor for Criminal Matters against Organized Crime, Decision of March 20, 2007.
- ANNEX 20:** Office of the Attorney General, Office of the Third Supra-Provincial Criminal Prosecutor, File No 04-2007, March 29, 2007
- ANNEX 21:** Request to amend order to open investigation filed by Felix Vicente Anzualdo Vicuña. Received on November 29, 2005.
- ANNEX 22:** Supreme Court of Justice of the Republic, Permanent Criminal Chambers, Office of the Investigating Magistrate of the Supreme Court, Order to expand investigation, Av. N° 45-2003, February 8, 2006.

- ANNEX 23:** Supreme Court of Justice, First Transitory Chambers, Extradition A.V. NO 2-2006, July 13, 2006.
- ANNEX 24:** Newspaper articles.
- ANNEX 25:** Report of abduction and disappearance of Kenneth Ney Anzualdo Castro of January, 1994.
- ANNEX 26:** Decision of the Office of the Fifth Supra-Provincial Criminal Prosecutor, Intake No. 50-2002, November 10, 2006.
- ANNEX 27:** Motion for reconsideration filed by APRODEH with the Office of the Fifth Supra-Provincial Criminal Prosecutor against the decision of November 10, 2006.
- ANNEX 28:** Decision of the Office of the Second Superior Special Prosecutor for Matters of Organized Crime on Motion to Reconsider 02-2007 of March 20, 2007.
- ANNEX 29:** Motion to reconsider of May 3, 2005.
- ANNEX 30:** Sworn Statement No. 083-2004-DIRCOCOR-PNP-DIVAPJ-INV-E5.
- ANNEX 31:** Truth and Reconciliation Commission (CVR), Record of testimony N° 100079, given by Felix Vicente Anzualdo Vicuña, January 4, 2002.
- ANNEX 32:** CVR, Record of testimony N° 700418, given by José Antonio Melgar Arias, October 21, 2002.
- ANNEX 33:** CVR, Record of testimony N° 700646, given by Martín Palomino Sayrytupac, October 24, 2002.
- ANNEX 34:** Records of victim's kinship.
- ANNEX35:** Report of the Ad Hoc Solicitor of the State for the Fujimori-Montesinos Case of July 16, 2007.
- ANNEX 36:** Official Letter of the Office of the Third Supra-Provincial Prosecutor for Criminal Matters of June 25, 2007.
- ANNEX 37:** Record of proceedings of Complaint 04-2007.
- ANNEX 38:** Record of proceedings of Case File 09-04
- ANNEX 39:** Most recent records of proceedings.
- ANNEX 40:** Powers-of-attorney.

**B. Testimonial evidence****a. Witnesses**

221. The Inter-American Commission offers the following testimony:

- Felix Vicente Anzualdo Vicuña, father of Kenneth Ney Anzualdo Castro, for him to recount his feelings of anguish and powerlessness stemming from the disappearance of his son and the failure to identify and punish the culprits, as well as the effects of these events on his family and other aspects pertaining to the object of the instant application.

**XII. PARTICULARS OF ORIGINAL PETITIONERS, VICTIM AND HIS NEXT OF KIN**

222. As provided by Article 33 of the Rules of Procedure of the Court, the Inter-American Commission informs the Court that the original petitioner is the Asociación Pro-Derechos Humanos (APRODEH) ['Association for Human Rights'] and the Centro por la Justicia y el Derecho Internacional (CEJIL: 'Center for Justice and International Law'). The next of kin of the victim have granted powers-of-attorney to said organizations for them to be their legal representative in bringing the case before the System, as is on record in the attached documents.<sup>187</sup> The representatives of the victim and his next of kin have established a single [REDACTED]

[REDACTED]

[REDACTED]

Washington, D.C.  
July 11, 2008

<sup>187</sup> See Annex 40, Powers-of-attorney.