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Organización de los
Estados Americanos



**INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS**

**APPLICATION BEFORE THE INTER-AMERICAN COURT
OF HUMAN RIGHTS IN THE CASE**

Narciso González Medina et al.
Case 11,324

AGAINST THE DOMINICAN REPUBLIC

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APPLICATION BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE DOMINICAN REPUBLIC
CASE 11,324
NARCISO GONZÁLEZ MEDINA *ET AL.*

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") hereby submits this application to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") to initiate proceedings in case 11,324, Narciso González Medina *et al.*, against the Dominican Republic (hereinafter "the Dominican State" or "the State") for the forced disappearance of professor, columnist and opposition leader Narciso González Medina (hereinafter "the victim" or "Mr. González") as a consequence of his participation in the public denunciation of electoral fraud during the 1994 presidential elections. Narciso González Medina was deprived of his liberty by State officers on May 26, 1994. In the days that followed, he was seen alive and in very bad condition in various security facilities under custody of State officers. Today, his fate and whereabouts are unknown, and no serious, diligent or effective investigation has been undertaken to discover the facts, identify the perpetrators and impose the appropriate penalties. It has been 16 years, and Narciso González Medina remains disappeared and the facts are still in the impunity.

2. The Inter-American Commission requests the Court to establish the international responsibility of the Dominican State, which has failed to fulfill its international obligations and has violated the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in its Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 13 (right to freedom of expression), and 8 and 25 (rights to a fair trial and judicial protection), all in conjunction with Article 1(1) thereof.

3. This case has been processed in accordance with the American Convention and is being submitted to the Court in compliance with the transitory provision in Article 79(2) of the Court's Rules of Procedure. A copy of Report 111/09, drawn up pursuant to Article 50 of the Convention¹ is attached as an appendix to this application. The Dominican State has not submitted information on compliance with the Commission's recommendations.

II. PURPOSE OF THE APPLICATION

4. The purpose of this application is to request respectfully that the Court conclude and declare as follows:

- (a) The Dominican Republic is responsible for violation of the rights to recognition as a person before the law, to life, to humane treatment, to personal liberty, to freedom of expression, to a fair trial and to judicial protection, established in Articles 3, 4, 5, 7, 13, 8 and 25 of the American Convention in conjunction with the obligations enshrined in Article 1(1) thereof, to the detriment of Narciso González Medina;
- (b) The Dominican Republic is responsible for violation of the rights to humane treatment, access to information, a fair trial, and judicial protection, established in Articles 5, 13, 8 and 25 of the American Convention in conjunction with the obligations enshrined in

¹ IACHR, Report 111/09 (merits) Case 11,324, Narciso González Medina, November 10, 2009, Appendix 1.

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Article 1(1) thereof, to the detriment of the sons and daughters of Narciso González Medina, i.e. Ernesto, Rhina Yocasta, Jennie Rossana and Amaury, all of whom have the last name González Ramírez, and of his wife, Luz Allagracia Ramírez.

5 Therefore the Inter-American Commission requests the Court to order the Dominican State:

- (a) To seek the fate or whereabouts of Narciso González Medina or his mortal remains by all available means;
- (b) To carry out a full, impartial and effective investigation to elucidate the forced disappearance of Narciso González Medina, identify those responsible and impose the appropriate penalties;
- (c) To provide for appropriate administrative, disciplinary or penal measures to prevent the repetition of offenses such as those alleged in this application, by which employees of the State contributed, by act or omission, to concealment, denial of justice and impunity, failed in their duty to respond to the situation denounced or were involved in measures to hinder procedures intended to identify and punish the perpetrators;
- (d) To make the necessary efforts to recover official documents and/or records relating to the case that have been lost or removed; specifically, the Commission requests the Court to order the State not to deny the victim's family members access to this information;
- (e) To organize the government system to protect the right of access to information by creating, keeping, safeguarding, and refraining from manipulating official records and documents;
- (f) To take steps to preserve the historical memory of Narciso González Medina;
- (g) To adopt measures to rehabilitate the family of Narciso González Medina;
- (h) To compensate the family of Narciso González Medina for material and nonmaterial harm; and
- (i) To pay the costs and legal expenses incurred to bring the instant case before the Inter-American Commission and Inter-American Court.

III. REPRESENTATION

6 In accordance with Article 24 of the Court's Rules of Procedure, the Commission has designated the Commissioner, Rodrigo Escobar Gil, the Executive Secretary, Santiago A. Canton, and the Special Rapporteur for Freedom of Expression, Catalina Botero, as its delegates in this case. Deputy Executive Secretary Elizabeth Abi-Mershed and lawyers Isabel Madariaga and Silvia Serrano Guzmán have been designated to serve as legal advisors.

IV. COMPETENCE OF THE COURT

7 Under Article 62(3) of the American Convention, the Inter-American Court has jurisdiction in all cases submitted to it concerning interpretation or application of the Convention, provided that the States parties to the case recognize or have recognized the Court's jurisdiction.

8 The Dominican State ratified the American Convention on April 19, 1978 and accepted the Court's jurisdiction on March 25, 1999. Although some of the violations alleged in this application were initiated before that date, they continued after the Court's jurisdiction was accepted and persist today.

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9 The Inter-American Commission and the Inter-American Court have consistently held, as will be detailed below, that the forced disappearance of persons constitutes a multiple, continuous violation. Regarding its multiple nature, the Commission and the Court agree that forced disappearance constitutes a violation of rights protected by the American Convention and, in particular, those enshrined in Articles 3, 4, 5 and 7. Regarding its continuous nature, both bodies have repeatedly written that forced disappearance continues until such time as the victim's fate or whereabouts have been established. The definition given in the Inter-American Convention on Forced Disappearance of Persons² expressly embraces this principle, which the bodies of the Inter-American system have recognized for many years in their writings.

10 Furthermore, in the past decade, the Commission has consistently affirmed that the multiple and continuous nature of forced disappearance has implications for the temporal jurisdiction of the bodies of the Inter-American System. Thus, in cases in which the forced disappearance was initiated prior to ratification of the American Convention and/or acceptance of the Court's jurisdiction, the Commission has emphasized that both bodies are competent to decide on all components of the forced disappearance because, by the very nature of the violation, it is impossible to separate the various components or to establish that jurisdiction is present in one because it is ongoing but not in another because it occurred instantaneously.

11 In its recent judgment in *Radilla Pacheco v. Mexico*, the Inter-American Court indicated that the forced disappearance of persons requires systematic, comprehensive analysis, which implies the need for an all-encompassing perspective on this phenomenon, owing to the "plurality of behaviors that, united by a single purpose, permanently violate rights protected under the Convention".³ In the words of the Court, "analysis of forced disappearance must cover the entire set of events submitted for the consideration of the Court [] Only in this way can the legal analysis of forced disappearance be in keeping with the complex human rights violation involved,⁴ its continuous or permanent nature, and the need to consider the context in which the acts occurred in order to analyze their effects over time and to focus on their consequences as a whole []".⁵

12 On the basis of the foregoing, the Inter-American Court dismissed Mexico's preliminary objections questioning the Court's temporal jurisdiction and ruled on breach of the obligation to respect and protect the rights enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention as a consequence of the forced disappearance of the victim, even though the offense was initiated before Mexico's accession to the American Convention.

13 As discussed below under Findings of Fact, in the instant case, the fate or whereabouts of Narciso González Medina or his mortal remains have not been established. This

² See Articles II and III of the Inter-American Convention on Forced Disappearance of Persons.

Although the Dominican Republic is not a party to the Inter-American Convention on Forced Disappearance of Persons, the Commission considers the mention of this instrument relevant because it contains the principles underlying the definition of forced disappearance and reflects an international consensus on the subject. The Inter-American Court has referred to this consensus in its judgment in *Radilla Pacheco v. Mexico* (November 23, 2009, para. 140).

³ I/A Court H.R., *Case of Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations and Costs*, Judgment of November 23, 2009, Series C No. 209, para. 138.

⁴ I/A Court H.R., *Case of Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations and Costs*, Judgment of November 23, Series C No. 209, para. 146, citing I/A Court H.R., *Case of Anzualdo Castro v. Peru, Preliminary Objection, Merits, Reparations and Costs*, Judgment of September 22, 2009, Series C No. 202, para. 67; and I/A Court H.R., *Case of Ticona Estrada et al. v. Bolivia, Merits, Reparations and Costs*, Judgment of November 27, 2008, Series C No. 191, para. 70.

⁵ I/A Court H.R., *Case of Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations and Costs*, Judgment of November 23, Series C No. 209, para. 146, citing I/A Court H.R., *Case of Goiburú et al.*, Judgment of September 23, 2009, Series C No. 153, para. 85 and I/A Court H.R., *Case of Anzualdo Castro v. Peru, Preliminary Objection, Merits, Reparations and Costs*, Judgment of September 22, 2009, Series C No. 202, para. 67.

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means that his forced disappearance has continued beyond the date on which the Dominican Republic accepted the jurisdiction of the Inter-American Court. It is therefore the opinion of the Commission that the Court has *ratione temporis* jurisdiction to rule on the facts underlying the instant application.

V. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION⁶

14 The IACHR received the initial petition on July 1, 1994 and initiated its processing in accordance with the procedure then in force. On March 7, 1996, the IACHR declared the case admissible and assigned it the number 11.324. On March 13, 1996, the IACHR notified the parties of said report and gave them 90 days to indicate if they desired to initiate a friendly settlement procedure and take part in a public hearing. The IACHR decided to publish the report on admissibility on March 3, 1998.⁷

15 On July 5, 1996, the Center for Justice and International Law (CEJIL) and Human Rights Watch became co-petitioners in the case.

16 On October 11, 1996, the IACHR held a hearing on the case in the course of its 93rd Regular Session. During the hearing the petitioners expressed their desire to submit the case to a friendly settlement procedure. The IACHR granted the State 30 days to indicate its position in that respect.

17 The State conveyed additional information to the IACHR on October 11 and November 12, 1996, without making known its position on the friendly settlement offer. On November 5, 1996, the petitioners submitted additional information to the IACHR. On January 23, 1997, the petitioners requested the IACHR to adopt a report on merits in the case "in view of the fact that the friendly settlement with the government of the Dominican Republic [had] been unsuccessful." On April 25, 1997, following an extension the State submitted a communication in which it said that it "[had] opted for the friendly settlement procedure [proposed by] the petitioners at the public hearing."

18 On October 6, 1997, the IACHR held another hearing on the case in the course of its 97th Regular Session. At the hearing the State expressed its commitment to solving the case and undertook to set up a committee composed of three government representatives and three representatives of the petitioners to move forward with, and follow up on, the case. On October 21, 1997, the State provided the IACHR with the names of the government officials who would comprise the follow-up committee.

19 On November 13, 1997, the Truth Commission, a group formed by civil society organizations, forwarded to the IACHR a "review of measures adopted since the hearing of October 6, 1997."

20 On February 25, 1998, the IACHR held a hearing on the case in the framework of its 98th Regular Session. At the hearing, despite the fact that the State reiterated its readiness to continue to cooperate in the friendly settlement procedure, the petitioners requested the IACHR to adopt a report on merits in the case since the attempts at a friendly settlement had failed to bear fruit.

⁶ The proceedings mentioned in this section may be found in the IACHR case file. Appendix 3.

⁷ I/A Court H.R. Report 16/98 (admissibility), Case 11.324, Narciso González (Dominican Republic) March 3, 1998. Available at <http://www.oidh.org/annualrep/97span/RD11.324.htm>

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21 The State submitted press information on the case on April 2 and 17, May 15, August 10 and 18, and September 14 and 18, 1998; January 11 and 15, February 1, March 16, May 25, June 1 and 17, and August 19, 1999; August 28, 2001; and March 6 and June 28, 2002. On November 2, 1998, the State sent the IACHR a report on the case prepared by the Prosecutor General.

22 On November 10, 2005, the petitioners submitted a brief containing additional information on merits.

23 On August 22, 2006, the State forwarded an affidavit from the Seventh Examining Court in and for the National District which mentioned that the case had been set aside following the judgment of December 18, 2002 of the Court of Appeals of Santo Domingo.

24 The petitioners furnished additional information on merits in the case on October 3, 2006. On January 8, 2007, the State requested the IACHR for an extension to submit its comments. It was granted an extension of 30 days. The State requested another extension from the IACHR on March 23, 2007. It was granted an extension of 30 days. On that occasion the IACHR requested the State for an update on measures adopted in connection with the investigation into the disappearance of Narciso González Medina.

25 On May 2, 2007, the State informed the IACHR of its decision to reopen the inquiry into Mr. Narciso González Medina's disappearance and informed that it would forward a complete copy of the judicial record. On August 21, 2007, the IACHR granted the State an additional month to forward the information promised.

26 On November 21, 2007, the State notified the IACHR that the Office of the Attorney General [*Ministerio Público*] had offered one million pesos to anyone who provided information in connection with the forced disappearance of Narciso González Medina; and that the Narciso González Cultural Center had been opened.

27 On June 5, 2008 and May 19, 2009, the petitioners reiterated their request to the IACHR that it adopt a report on merits in this case.

28 On June 26, 2008, the IACHR received from the State a copy of the record of the proceedings in the case before the Dominican courts. Said information was sent again by the State, at the request of the IACHR, on May 29, 2009.

29 During its 137th Regular Period of Sessions, on November 10, 2009, the Commission approved the report No. 111/09 on the merits of the case, pursuant to Article 50 of the Convention. In its concluding section, the report states:

Based on the considerations presented above, the IACHR concludes that the Dominican State violated the rights recognized in Articles 3, 4, 5, 7, 13, 8 and 25 of the American Convention, in conjunction with its obligations under Article 1(1) thereof, to the detriment of Narciso González Medina. The Dominican State is also responsible for violation of the rights guaranteed by Articles 5, 13, 8 and 25 of the American Convention to the detriment of his next-of-kin, Luz Altagracia Ramírez, Ernesto, Rhina Yocasta, Jennie Rossana y Amaury González Ramírez.⁶

⁶ IACHR Report 111/09 (merits), Case 11,324, Narciso González Medina, November 10, 2009, para. 263, Appendix 1.

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30 In this report, the Commission recommended the Dominican State to:

1. Conduct a complete, impartial, and effective investigation into the fate or whereabouts of Narciso González Medina. Should it be determined that the victim is no longer alive, adopt the necessary measures to deliver his remains to his family.
2. Conduct a complete, impartial, and effective investigation to identify and punish all those responsible for the violations of the human rights of Narciso González Medina and his next-of-kin, including the necessary investigations to establish the responsibility of and punish those who were accessories after the fact and participated in the denial of justice.
3. Provide adequate reparation to the next-of-kin of Narciso González Medina, which should include both material and nonpecuniary damages.
4. Adopt the necessary measures to recover the archives on what happened to Narciso González Medina and deliver them to his next-of-kin, in order to set down a historic record of the facts in the case.
5. Make a public acknowledgement of international responsibility and a public apology for the violations declared in the instant report⁹.

31 On December 2, 2009, the Commission notified the Dominican State of report No. 111/09 on the merits and granted it two months to report on the measures taken to comply with the recommendations. On the same date, the Commission informed the petitioners that it had approved the merits report. On December 16, 2009, the Commission released the relevant parts of the merits report to the petitioners on a confidential basis.

32 In a communication dated December 31, 2009, the petitioners expressed their interest in submitting the case to the Inter-American Court. On February 18, 2010, a communication was received from the State requesting a two-month extension of the deadline set by the Commission "for the reason that the Dominican authorities are still working on preparing the requested report". In the same communication, the State indicated that it expressly waives the right to file preliminary objections with the Inter-American Court in observance of the time-limit established in Article 51(1) of the Convention.

33 On February 26, 2010, the Commission decided to grant the State the requested two-month extension and set a deadline of April 14, 2010 for submission of the recommendations compliance report. In a communication dated April 30, 2010, the Office of the Attorney General of the Dominican Republic requested an additional extension. In the absence of any information on compliance with the recommendations, the Commission denied the requested extension and decided to submit the case to the jurisdiction of the Inter-American Court.

VI. CONSIDERATIONS OF FACT

34 Since its earliest judgments, the Inter-American Court has established standards for evaluation of evidence that are less formal than those recognized in domestic laws. In this connection, the Court has long held that, bearing in mind that international tribunals have the authority to appraise and assess evidence based on the rules of competent analysis, a rigid determination of the quantum of evidence necessary to substantiate a ruling is not applicable. In determining the international responsibility of a state for violation of human rights, international courts have considerable latitude when assessing the evidence submitted to them.

⁹ IACHR Report 111/09 (merits), Case 11,324, Narciso González Medina, November 10, 2009, para. 264. Appendix 1

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on the relevant facts, based on the principles of logic and experience¹⁰

35 The Inter-American Court has recently reiterated that, in the field of international human rights, the powers to sift and weigh the evidence should not be bound by the legal rules of evidence¹¹

36 The Commission emphasizes that in cases involving the phenomenon of forced disappearance it has been the practice of the bodies of the Inter-American system to give special consideration to the nature of this violation, which is intended to erase any physical trace of the crime and which is generally followed by a series of acts and omissions on the part of State officers seeking to cover up the crime by means of various ploys. First, they deny the deprivation of liberty. Next, they resort to disinformation, or the dissemination of false information, regarding the victim's whereabouts or fate. Finally, they conduct ineffective, lax investigations that, far from establishing the truth, perpetuate the ignorance of the victim's fate. On the basis of these considerations, the Commission discusses below its findings of fact in the instant application.

A. Historical background

37 From 1930 to 1961 the Dominican Republic was under the dictatorship of Rafael Leonidas Trujillo. During that period, as the IACHR noted in its *Report on the Situation of Human Rights in the Dominican Republic* (1999), there existed a "practice of forced disappearances as a state policy aimed at eliminating political opponents."¹² In 1957 Joaquín Balaguer was appointed *de facto* Vice President.

38 Rafael Leonidas Trujillo was assassinated in 1961 and the first elections following the end of the dictatorship were held in December 1962. Juan Bosch was elected and took office in February 1963. In September 1963 he was ousted by a civilian-military *coup d'état* which installed a Governing Junta. Joaquín Balaguer remained in exile. Upon his return in 1966, Joaquín Balaguer won the elections and took over the presidency until August 1978. He was re-elected President of the Dominican Republic in 1986, 1990, and 1994.

B. 1994 elections

39 On May 16, 1994, Joaquín Balaguer was elected President of the Republic. The elections were held in a highly polarized atmosphere between the political parties that took part¹³.

40 The OAS Electoral Observation Mission recorded a large number of irregularities during the polls. A phenomenon known as "dislocation" occurred in several municipalities. This consisted of "citizens with identity and voting cards being unable to exercise their right to vote because [...] [their] names [...] did not appear on the official lists, despite the fact that they appeared on the lists given to the political parties previously. Due to the complaints of

¹⁰ I/A Court H.R., *Case of Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 184, citing I/A Court H.R., *Almonacid Arellano Case*, Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment of September 26, 2006, Series C No. 154, para. 69. Cf. also I/A Court H.R., *Juan Humberto Sánchez Case*, Interpretation of Judgment on Preliminary Objections, Merits, and Reparations (Art. 67 of the American Convention on Human Rights), Judgment of November 26, 2003, Series C No. 102, para. 42.

¹¹ I/A Court H.R., *Anzures Castro Case*, Judgment of September 22, 2009, para. 29; *White Van Case* (*Paniagua Morales et al. v. Guatemala*), Reparations and Costs, para. 51; *Case of Pérez et al. v. Venezuela*, para. 112, and *Case of Ríos et al. v. Venezuela*, para. 101.

¹² Annex 1, IACHR, *Report on the Situation of Human Rights in the Dominican Republic* (1999), para. 152. Available at <http://www.oidh.oas.org/countryrep/Rep.Dominicana99sp/index.htm>

¹³ Annex 3, Unit for the Promotion of Democracy, Organization of American States (OAS), Electoral observations in the Dominican Republic, 1994-1996.

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"dislocation", the Central Electoral Board created a Verification Commission to review the preliminary count in the general elections. That Commission concluded that "[there were] irregularities at more than 1,900 polling stations" ¹⁴

41 In its report on the elections of May 16, 1994, the OAS Electoral Observation Mission noted that "never before had there been a situation [such as this,] in which the sheer scale of irregularities could have affected the outcome of the elections." As a result of this situation, the OAS Mission had to extend its stay for three months after the poll ¹⁵

C. Narciso González Medina and his family

42 Narciso González Medina was a well-known activist, columnist, and leading opponent of the dictatorial regime of Rafael Leonidas Trujillo and the governments of Mr. Joaquín Balaguer.

43 Narciso González Medina was born in the Dominican Republic on October 29, 1941. He was also known as "Narcisazo" to distinguish him from a namesake of his ¹⁶. In 1994, Narciso González Medina was living with his family in a house in the Villa María district of Santo Domingo ¹⁷. He was married to Luz Altigracia Ramírez, ¹⁸ with whom he had four children: Ernesto González Ramírez, ¹⁹ Rhina Yocasta González Ramírez ²⁰, Jennie Rossana González Ramírez ²¹ y Amaury González Ramírez ²²

44. Narciso González Medina suffered from refractory epilepsy, which, if left untreated, caused him to have seizures ²³

45 Narciso González Medina graduated as an attorney from UASD Law School. He worked as a lecturer at UASD from 1968 until his disappearance. At the time he was Director of the Department of Cultural Extension. ²⁴ He also held leadership positions in the Dominican Popular Movement and Dominican Students Federation ²⁵

¹⁴ Annex 3 Unit for the Promotion of Democracy Organization of American States (OAS). Electoral observations in the Dominican Republic. 1994-1996

¹⁵ A Annex 3 Unit for the Promotion of Democracy. Organization of American States (OAS). Electoral observations in the Dominican Republic. 1994-1996

¹⁶ Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González

¹⁷ Annex 14 Statement of Luz Altigracia Ramírez Martínez, February 1, 1999

¹⁸ Annex 14 Extract of marriage, December 25, 1969; Annex 14 Statement of Luz Altigracia Ramírez Martínez, February 1, 1999; Annex 4. *La Muralla* magazine. Biographical information on Dr. Narciso González

¹⁹ Annex 14 Extract of birth of Ernesto González Ramírez, November 10, 1970; Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González

²⁰ Annex 14 Extract of birth of Rhina Yocasta González Ramírez, April 24, 1972; Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González

²¹ Annex 14 Extract of birth of Jennie Rosanna González Ramírez, March 19, 1974; Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González

²² Annex 14 Extract of birth of Amaury González Ramírez, September 21, 1978; Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González. According to available information, Amaury González Ramírez was killed in a traffic accident on December 12, 2005

²³ Annex 5 Report of Dr. Santiago Valenzuela Sosa on Narciso González Medina's health as of June 22, 1994. Annex 15 Statement of Dr. Santiago Valenzuela before the Cámara de Calificación of Santo Domingo, September 20, 2002

²⁴ Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González

²⁵ Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González; Annex 14 Statement of José Martín Suriel Núñez, September 17, 1998

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46 He worked as a journalist and published satirical political columns in *El Sol* and *La Noticia* newspapers; he wrote scripts for television shows and founded *Tirabuzón*, a political-satire weekly; he founded and directed the magazine *El Callejón con Salida* and promoted the Management Committee of the *Sociedad de Animadores de la Cultura y la Democracia* [Outreach Society for Culture and Democracy] (SACUDE. Narciso González Medina was well-known for his poetic turn of phrase in denouncing wrongdoings in a column called "*El pueblo se queja en versos*" [The people complain in verse], which was published by *La Noticia* newspaper.²⁰

D. Circumstances surrounding the disappearance of Narciso González Medina

47 Days before the elections Narciso González Medina had published an opinion piece in his column in *La Muralla* magazine entitled "*10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América*" [Ten reasons why Balaguer is the biggest evil to have emerged in the Americas]. In the column, Narciso González Medina described Joaquín Balaguer as a "murderer," "hoodlum," "immoral," "criminal," "corrupter," "obsequious," "cheat," "harmful," "scoundrel," and "embezzler."²¹

48 After making these statements Narciso González Medina began to be followed *seguimientos*.²²

49 On May 25, 1994, Narciso González Medina gave a speech to a meeting of UASD faculty members in which he called on the University Council and the Rector to condemn what had happened in the elections. In his address, Narciso González Medina said that the main beneficiaries of the electoral fraud were the heads of the police, army, and air force. According to the journalist, they had received large sums of money from President Balaguer to ensure that he remained in the Presidency:

Horacio Vásquez, old, infirm and no longer able to move about unassisted, decided to die in power and organized elections for which he coined as the main slogan the famous phrase: "*Horacio o que entre el mar*" [Horacio or the sea]. "For Horacio Vásquez only two things were possible: either the sea swallowed up the Dominican Republic whole, or it allowed him to see out the last days of his life in power. Ultimately, it was not the sea that came but a civilian-military movement that was taken advantage of by the most prominent member of the guard at the time: none other than Rafael Leonidas Trujillo Molina. And so Horacio Vásquez was ousted and the Dominican Republic was left with a dictatorship, a tyranny that we put up with for a long time. When we consider now that this electoral fraud was organized after the President of the Republic gave the chief of police, the head of the air force and the head of the army the chance to make 25 million pesos in contracts, without being engineers; when we consider that and realize that the whole country is being militarized, we must conclude that we are seeing a repeat of what happened with Horacio Vásquez; which cannot be combated with mere documents but by taking a stand that borders on what in civics is called civil disobedience."²³

²⁰ Annex 4 *La Muralla* magazine. Biographical information on Dr. Narciso González.

²¹ Annex 6 *La Muralla* magazine. "*10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América*" [10 proofs that none more evil than Balaguer has emerged in America].

²² Annex 13 Statement of Luz Altigracia Ramírez, June 6, 1998, to the State Secretariat of the Armed Forces; Annex 14 Statement of Luz Altigracia Ramírez Martínez, July 7, 1998; Annex 13 Statement of Virgilio Félix Almánzar Estrella, Truth Commission member, to the State Secretariat of the Armed Forces.

²³ Annex 7 Speech by Narciso González Medina, May 25, 1994. The parties did not provide the IACHR with the original video; Annex 4 *La Muralla* magazine. Biographical information on Narciso González; Annex 14 Statement of José Martín Surlal Núñez, September 17, 1998.

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50 The speech was filmed and broadcast by the media after Narciso González Medina had already disappeared. A number of witnesses suggest that the speech was recorded by the government intelligence service.³⁰

51 In the days prior to the disappearance of Narciso González military officers approached an employee of CODETEL (Dominican Telephone Company) who was in the habit of collaborating with the "security agencies" with a view to putting a "wiretap on the telephone of the wife of Professor Narciso González."³¹

52 Narciso González Medina went missing on May 26, 1994.³² Various witnesses indicate that Narciso González was seen that same day and on subsequent days inside a number of government facilities and in bad condition.

53 Among these witnesses is Juan Dionisio Marte, military official, who stated that he had participated in the detention of Narciso González Medina. He said that after the detention operation, Narciso González had been transferred to the facilities of the Intelligence Division of the State Secretariat of the Armed Forces (J-2), on the day that his family reported his disappearance. In his testimony, he gave the names of the officials who allegedly participated in the operation. After being shown a picture of Narciso González, the witness affirmed that this was the person whom they had sought in the described operation. Lastly, he said that he had not reported what had happened to his superiors "out of fear that they would kill [him] if [he] spoke up." He also shared his story with a friend, who subsequently made a statement regarding what Juan Dionisio Marte had told him, which included mention of "the pressure he was under."³³ As indicated in the section on fair trial and judicial protection, Juan Dionisio Marte's later retraction in the context of the trial was never investigated by the corresponding authorities. His testimony was thrown out without any inquiry as to the source of his fear.

54 Another witness in the case, Antonio Quezada Pichardo, military officer, said that he had been present when Narciso González Medina was brought to the facilities of the

³⁰ Annex 14. Statement of Roberto José Santana Sánchez, August 14, 1998; Annex 14. Statement of José Martín Suriel Núñez.

³¹ Annex 14. Statement of Martha Elena Díaz G. de Acosta, February 16, 1999; Annex 13. Statement of Leonardo Reyes Bencosme to the State Secretariat of the Armed Forces, June 2, 1998; Annex 14. Statement of Manuel Enrique Vanegas Rivas, March 3, 1999.

³² Annex 14. Statements of Luz Allagracia Ramírez (July 7, 1995); Rhina Yocasta González Ramírez (July 10, 1995) and Jennie Rosanna González Ramírez (July 14, 1995); Annex 13. Statement of Tomás B. Castro Montenegro to the State Secretariat of the Armed Forces; Annex 12. Letter from the Truth Commission to the Chief of the National Police, dated February 22, 2005; Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1996. According to the report, "it is an irrefutable fact that Narciso González Medina, also known as Narcisazo, has been absent and his whereabouts unknown since May 26, 1994."

³³ Annex 13. Statement of Juan Dionisio Marte to the State Secretariat of the Armed Forces, May 15, 1998; Annex 13. Statement of Antonio Quezada Pichardo before the Office of the Public Prosecutor for the National District, March 12, 1998; Annex 13. Statement of Antonio Quezada Pichardo to the State Secretariat of the Armed Forces, January 1998. Antonio Quezada Pichardo, who was at the time a captain in the national army, testified that Juan Dionisio Marte told him personally that he had participated in the arrest operation, stressing "the pressure he was under" owing to the death under odd circumstances of another officer, Captain Silvestre Batista Ferrera, who had told his brother that Narciso González was being held in a government facility. According to his statement, "when [Juan Dionisio Marte] realized two or three days afterwards that [Silvestre Ferrera Batista] was dead, the fear set in, and he said he had participated." In the same statement, Antonio Quezada Pichardo added that he had told Juan Dionisio Marte the following: "Look what happened. Look what happened to Captain [Batista] Ferrera. He told his brother he had participated in the Narcisazo case, and look what happened to him." The testimony also indicates that this commentary came to the attention of other army members and that an officer had subsequently told him "this commentary could make trouble for [him], [and] he advised [him] to resign" because "it had been [seen as] an act of disloyalty." In his statements, Antonio Quezada Pichardo said that he had submitted his resignation to the Dominican armed forces in October 1996. As explained below, before his death, Captain Silvestre Batista Ferrera told his brother, then Sergeant Major Carlos Batista Rivas, retired, about Narciso González Medina's presence at the A-2 air force base ("El Mercadito"). A few days later, Captain Silvestre Batista Ferrera died in a traffic accident under unexplained circumstances. It should be noted that his next of kin have stated that they were not allowed to have an autopsy performed and that the officer's death might have been intentional.

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Intelligence Division of the State Secretariat of the Armed Forces (J-2) "[on] the 24th, 25th [or] 26th of May [1994]", accompanied by "some three or four people".³⁴ In addition, Mr. González Medina was seen in bad shape and "soaking in blood" in the early morning of May 27, 1994 at the National Police Homicide Department by Junior Sarita Lebrón, a homicide department employee.³⁵ An Armed Forces supplier has confirmed Narciso González' presence at this State facility. Specifically, Paulina Alba has stated that an armed force general told her that he had received a call informing him that Narciso González was being held at National Police facilities.³⁶ Furthermore, a person then in custody at the National Intelligence Department has stated that he saw Narciso González at that facility. This witness reported that Narciso González had been hurt and was having trouble walking.³⁷ Lastly, the brother of an army captain has stated that, before his death, his brother told him that he had seen Narciso González Medina at the Dominican air force base (A-2, or "El Mercadito") after May 26, 1994 in very bad health.³⁸

55 On the basis of the foregoing evidence, taken as a whole, the Commission considers that Narciso González Medina, having been seen for the last time in the custody of State officers, was disappeared by security agents of the State.

56 Although rumors and "possible theories" have emerged up regarding the fate of Narciso González and the whereabouts of his remains,³⁹ as yet there is no official version of what happened and none of these theories has been confirmed.

³⁴ Annex 13, Statement of Antonio Quezada Pichardo to the Office of the Public Prosecutor for the National District, March 12, 1998; and Annex 13, Statement of Antonio Quezada Pichardo, to the State Secretariat of the Armed Forces, January 1998.

³⁵ Annex 14, Statement of Junior Sarita Lebrón, August 19, 1998; Annex 13, Statement of Junior Sarita Lebrón to the State Secretariat of the Armed Forces. The witness testified that he knew that it was Narciso González because when the homicide force sergeant had asked him his name, "[he] answered 'Narciso González'." According to his testimony, the homicide sergeant initially refused to admit Narciso González because he was in such bad shape, but after a telephone call, he agreed to put him in a cell, where he remained for several hours. He thought that they would take him to the hospital, but when he was turned over to two individuals whom he identified as José Julián Pérez Jiménez, alias "José Cabeza", and Héctor Nina Rodríguez, he "knew what it was about." According to his statement, these individuals took Narciso González out of the cell and put him in a vehicle. For this reason, he noted the license plate number and took a few "loose admission and release sheets" on which he said, Narciso González's admission to the police facility had been recorded. According to his statement, these documents were destroyed by government employees.

³⁶ Annex 13, Statement of Paulina Alba to the State Secretariat of the Armed Forces, May 20, 1998; Annex 14, Statement of Paulina Alba, February 19, 1999; Annex 15, Statement of Paulina Alba before the Cámara de Calificación of Santo Domingo, October 30, 2002. Paulina Alba, armed forces supplier, stated that she had been in the office of the State Secretary of the Armed Forces, General Constantino Matos Villanueva, when he received a telephone call, and on hanging up, he told her that they had called him about the Narciso González case and had told him he had been detained and was being held at national police facilities. According to Paulina Alba, General Matos Villanueva said, "I don't know why they are calling me about this, because I know nothing about it. Let each person accept his own responsibility. I only ordered them to go get him."

³⁷ Annex 13, Statement of Fernando Isidro Olivo Sánchez to the State Secretariat of the Armed Forces; and Annex 13, Undated statement of Carlos Rodolfo Cuevas to the State Secretariat of the Armed Forces. Fernando Isidro Olivo said that he was being held at the National Intelligence Department when Narciso González was brought there in May 1994. He said that Narciso González had a wound on his left cheek and had trouble walking and that that he had watched as they [put] him on a stretcher and load[ed] him into an SUV "in which they drove him away." He said that he knew that the person in custody was Narciso González because he recognized him when he saw him in the papers. When he realized this, he told Carlos Rodolfo Cuevas about it. For his part, Carlos Rodolfo Cuevas stated that he had seen Fernando Isidro Olivo in 1994 and 1996. On the first occasion, he told him that he had been in held at the National Intelligence Department with a person whose face was beaten up. On the second occasion, he told him that the person who had been in custody with him was Narciso González Medina and that he had recognized him from the pictures in the paper.

³⁸ Annex 13, Statement of Carlos Batista Rivasto the State Secretariat of the Armed Forces, June 27, 1998; Annex 14, Statements of Carlos Batista Rivas, November 22, 1996 and November 11, 1998; Annex 15, Statement of Carlos Batista Rivas before the Cámara de Calificación of Santo Domingo, September 20, 2002. Mr. Batista Rivas said that he had advised his brother not to talk about what had happened. Captain Silvestre Batista Ferreras was killed in a traffic accident on June 2, 1994. His brother claims that his death had to do what he had disclosed about Mr. González Medina. Regarding the death of Silvestre Batista Ferreras, cf. Autopsy report of the State Secretariat of Public Health and Social Welfare, dated December 2, 1996 (Annex 10).

³⁹ The "possible theories" about Narciso González' fate or whereabouts include the following:

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57 In sum, more than 15 years since Narciso González Medina was last seen at government facilities nothing is known about his fate or whereabouts, or those of his mortal remains

E. Family's search for Narciso González Medina and establishment of the Truth Commission

58 On the morning of May 27, 1994, the day after the arrest, Jenny González Ramírez, Narciso González Medina's daughter, called her mother, Luz Altagracia Ramírez, who visiting elsewhere, to tell her that her father had not come home the previous night. Upon hearing the news, Mrs. Luz Altagracia Ramírez went to the Police Palace to see if her husband's name appeared in any of the traffic accident records, and also to several hospitals. For his part, Ernesto González Ramírez, Narciso González's son, turned to the rector of UASD, Roberto Santana Sánchez, in order to begin the search for his father at military bases and hospitals.⁴⁰

- The body was taken in an ambulance to the Montecristi cemetery where it was buried in the family tomb of Mr. Manuel Enrique Vanegas Rivas. Relatives of Narciso González Medina went to the cemetery where they found a grave near the Vanegas family tomb that had "fresh cement and was half open." The family reached the conclusion that the victim may have been buried there for a short time but his body was removed when it was realized that an exhumation would be carried out.

- The body was taken to the city of San Pedro Macorís where it was cremated.

- The victim was murdered by Rafael López Hidalgo, who was incarcerated at the time for robbery. Rafael López Hidalgo gave a statement to the ONI in which he confessed to killing Narciso González Medina and disposing of his body in the river Haina. He said that the officers Mauro Acosta, Mario Peguero, and Juan Bautista Rojas Tobar had offered him money and said that the charges in his trial would be dropped if he killed Narciso González Medina. On the basis of this testimony search parties from Santo Domingo Fire Department searched the River Haina for the victim's body without success. López Hidalgo later denied this version and said that he had been bribed to incriminate the aforesaid officers for the disappearance.

- That the corpse was placed in an oil drum, which was then filled with concrete and dropped into the sea from a helicopter piloted by Leonardo Reyes Bencosme.

- Narciso González was taken to Ramón Military Hospital between May 26 and early June 1994, suffering from seizures and remained there for approximately one hour.

These theories are based on second-hand information, rumors, and anonymous calls. See: Testimony of Manuel Vanegas Rivas of June 2, 1998, to the Office of the Secretary of State for the Armed Forces. In: Report of the Mixed Board, August 1998. Communication of the petitioners of November 10, 2005, Annex 6 20; Testimony of Luz Altagracia Ramírez given on June 11, 1996, to the Seventh Examining Court in and for the National District. In: Decisions Nos. 195/2001 and 110/2001 of August 24, 2001. Communication of the petitioners of November 10, 2005, Annex 7, p. 165; Testimony of Luz Altagracia Ramírez of June 6, 1998, to the Office of the Secretary of State for the Armed Forces. In: Report of the Mixed Board, August 1998. Communication of the petitioners of November 10, 2005, Annex 6 9; Testimony of Tomás B. Castro Montenegro of May 29, 1998, to the Office of the Secretary of State for the Armed Forces. In: Report of the Mixed Board, August 1998. Communication of the petitioners of November 10, 2005, Annex 6 2; Testimony of Manuel Vanegas Rivas of December 17, 1996, to the Seventh Examining Court in and for the National District. In: Seventh Examining Court in and for the National District. Decisions Nos. 195/2001 and 110/2001 of August 24, 2001. Communication of the petitioners of November 10, 2005, Annex 7, p. 196; Testimony of José Ramón López Hidalgo of August 13 and 19, 1997, to the Seventh Examining Court in and for the National District. In: Decisions Nos. 195/2001 and 110/2001 of August 24, 2001. Communication of the petitioners of November 10, 2005, Annex 7, p. 207- 213; Testimony of José Ramón López Hidalgo of June 26, 1998, to the Office of the Secretary of State for the Armed Forces. In: Report of the Mixed Board, August 1998. Folder X, pp. 290-292; IACHR. Minutes of Public Hearing No. 11 of October 6, 1997, held at the 97th Regular Session; and Testimony of Napoleón Guerrero Andrickson of May 28, 1998, to the Office of the Secretary of State for the Armed Forces. In: Report of the Mixed Board, August 1998. Communication of the State of May 29, 2009. Folder X, pp. 64-66.

⁴⁰ Annex 13. Statement of Luz Altagracia Ramírez to the State Secretariat of the Armed Forces, June 6, 1998; Annex 14. Statements of Luz Altagracia Ramírez, Jennie González Ramírez and Rosalia Ramírez Martínez; Annex 15. Statement of Luz Altagracia Ramírez before the Cámara de Calificación of Santo Domingo, July 16, 2002; Annex 14. Statement of Roberto José Santana Sánchez, August 14, 1998.

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59 On May 28, 1994, the family filed a report with the Missing Persons Office of the National Police.⁴¹

60 On May 30, 1994, Luz Altagracia Ramirez went to the J-2 facility at the Office of the Secretary of State for the Armed Forces together with Roberto Santana, Rector of the UASD, and Rafael González, brother of Narciso González Medina. Luz Altagracia Ramirez was received by the then-Secretary for the Armed Forces, General Matos Villanueva. He told her that there was no jail in the J-2 facility and that he had no information about Narciso González Medina's whereabouts.⁴²

61 Over the days that followed Luz Altagracia Ramirez received information that her husband was at J-2 in a very serious condition. Luz Altagracia Ramirez returned to J-2 but this time she was not received by General Matos Villanueva but by his assistant. As they were talking she said that she caught sight on a desk of some pages with the letterhead of the Office of the Secretary of State for the Armed Forces, which said that "Professor Narciso González, who was mentally deranged, disappeared on May 26, 1994." When she asked about the origin of the document she was told that it was press information and later that it was a document with typing errors. She was not given a copy of the document because he said that it was for "internal use."⁴³

62 On May 31, 1994, Mrs. Luz Altagracia Ramirez again visited the offices of the National Police where she met negative results.⁴⁴ Her daughter, Rhina Yocasta Ramirez, went to La Victoria Public Jail and, according to her testimony, "spoke with Colonel Zorrilla, who told [her] that she would not be able to visit the cells where the inmates were held [...] because he had to organize the inmates."⁴⁵

63 On October 9, 1994, a group of citizens, "in view of the inaction of the authorities," created the Truth Commission in order to seek "clarification of the truth regarding the whereabouts of Dr. Narciso González and the prosecution and punishment of those responsible." Its members visited the then-Chief of the National Police, Rafael Guerrero Peralta, who provided them with a copy of the summaries of the testimonies taken by the Homicide Division. They also put letterboxes in different parts of the country to collect information about Narciso González Medina's disappearance.⁴⁶

64 In addition to the negative responses that the family of Narciso González Medina encountered in the search, throughout the investigations and proceedings described below the state officials named as participants in the arrest operation, as well as those in charge of the government agencies where Narciso González Medina was seen, again denied any involvement in what happened.⁴⁷

⁴¹ Annex 13. Statement of Rafael Oscar Bencosme Candler to the State Secretariat of the Armed Forces, June 18, 1998.

⁴² Annex 13. Statements of Luz Altagracia Ramirez (June 6, 1998) and Carlos Matos Villanueva to the State Secretariat of the Armed Forces; Annex 14. Statement of Luz Altagracia Ramirez, July 7, 1995; Annex 14. Statement of Carlos Matos Villanueva, December 11, 1996.

⁴³ Annex 13. Statements of Luz Altagracia Ramirez (June 6, 1998) and Carlos Matos Villanueva to the State Secretariat of the Armed Forces; Annex 14. Statement of Luz Altagracia Ramirez, July 7, 1995; Annex 14. Statement of Carlos Matos Villanueva, December 11, 1996.

⁴⁴ Annex 13. Statement of Luz Altagracia Ramirez to the State Secretariat of the Armed Forces, June 6, 1998; Annex 14. Statement of Luz Altagracia Ramirez.

⁴⁵ Annex 14. Statement of Rhina Yocasta González Ramirez.

⁴⁶ Annex 12. Letter from the Truth Commission to the Chief of the National Police, February 22, 1995; Annex 13. Statement of Tomás Castro Montenegro to the State Secretariat of the Armed Forces, May 29, 1998; Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

⁴⁷ Annex 13. Statement of Constantino Matos Villanueva to the State Secretariat of the Armed Forces; Annex 13. Statement of Andrés E. Lazala Delfín to the State Secretariat of the Armed Forces, May 16, 1998; Annex 13. Statement of Francisco Dolores Estévez Ramirez to the State Secretariat of the Armed Forces; Annex 14. Statement of

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F. Extrajudicial committees established by the State

65 The State created two extrajudicial commissions to investigate what happened to the victim: a) the so-called "Police Board of Inquiry," which carried out its work from June to October 1994; and, b) the so-called "Mixed Board," which began its activities in April 1998 by presidential order

1. Police Committee (Junta Policial)

66 As mentioned, on May 28, 1994, Luz Altagracia Ramírez presented herself at the offices of the National Police to report her husband's disappearance⁴⁰

67 Some days later, on June 3, 1994, the then-Chief of Police, Rafael Guerrero Peralta, ordered a Police Board of Inquiry to investigate the incident⁴⁹. The Police Board of Inquiry was composed of the Colonel Luis Manuel Tejeda Fernández, Lieutenant Colonel Rafael Oscar Bencosme Candelier, Colonel Manuel Reyes Núñez Paulino⁵⁰. The following persons collaborated with the board: Nelson Antonio Santos⁵¹ and José Agustín González Espiritusanto⁵². In spite of the fact that the Police Board of Inquiry kept a record of the investigation, the IACHR does not have a copy of the procedures it carried. The information on the Police Board mainly comes from the reports of the Mixed Board and letters from the Truth Commission.

68 On June 3, 1994, Lieutenant Colonel Rafael Oscar Bencosme Candelier sent a telegram to "all jails and medical centers to see if Dr. González was at one of them. On June 24, 1994, the Police Board of Inquiry determined that "there was no written evidence in the official

Francisco Dolores Estévez Ramírez, March 23, 1999; Annex 13. Statement of Rafael Bienvenido Romero Cintrón to the State Secretariat of the Armed Forces; Annex 13. Statement of Siano de Jesús Corona Jumelles to the State Secretariat of the Armed Forces; May 15, 1998; Annex 13. Statement of Rafael Reynoso Jiménez to the State Secretariat of the Armed Forces; May 17, 1998; Annex 13. Statement of Rafael Eugenio Reyes Castillo to the State Secretariat of the Armed Forces; May 16, 1998; Annex 13. Statement of Constantino Matos Villanueva to the State Secretariat of the Armed Forces; Annex 14. Statements of Constantino Matos Villanueva, December 11, 1996 and March 5, 1999; Annex 14. Statement of Santiago Alcántara Gómez, January 12, 1999; Annex 14. Statement of José de Jesús Sánchez López, January 12, 1999; Annex 14. Statements of Rafael Bencosme Candelier (August 25, 1998), Julio César Tejeda Durán (September 16, 1998) and Augusto Estarlin Vargas (December 1, 1998); Annex 13. Statements of José Julián Páez Jiménez (June 3, 1998) and Héctor Nina Rodríguez (June 23, 1998) to the State Secretariat of the Armed Forces; Annex 14. Statement of Juan Bautista Rojas Tobar, December 6, 1996; Annex 14. Statement of Juan Bautista Rojas Tobar, February 11, 1999; Annex 14. Statement of Domingo Nin Méndez, January 22, 1995; Annex 13. Statement of Leonardo Reyes Bencosme to the State Secretariat of the Armed Forces; June 2, 1998; Annex 14. Statement of Leonardo Reyes Bencosme, January 10, 1997

⁴⁰ Annex 13. Statement of Luz Altagracia Ramírez to the State Secretariat of the Armed Forces, June 6, 1998; Annex 14. Statements of Luz Altagracia Ramírez (July 7, 1995), Rafael Bencosme Candelier and Rafael Guerrero Peralta. The petitioners said that at that time, the family members were told that the license plate number of the SUV used to detain Narciso González was 011172

⁴⁹ Annex 13. Statement of Rafael Guerrero Peralta to the State Secretariat of the Armed Forces, June 24, 1998; Annex 14. Statement of Rafael Guerrero Peralta, December 10, 1996; Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998

⁵⁰ Annex 13. Statement of Rafael Guerrero Peralta to the State Secretariat of the Armed Forces, June 24, 1998; Annex 13. Statement of Rafael Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998; Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces; Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998; Annex 14. Statement of Manuel Núñez Paulino, December 9, 1996

⁵¹ Annex 13. Statement of Nelson Antonio Santos to the State Secretariat of the Armed Forces; Annex 14. Statement of Nelson Antonio Santos, June 15, 2001; Annex 14. Statement of Luis Manuel Tejeda Fernández, September 10, 1998

⁵² Annex 13. Statement of José Agustín Espiritusanto to the State Secretariat of the Armed Forces

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records of the () hospitals that Professor Narciso González had been brought in dead on arrival and his name registered⁵³

69 It also ordered a wiretap on the telephones of the family and neighbors of Narciso González Medina⁵⁴

70 In the framework of this inquiry, information was received that Narciso González Medina was being held by Major Mauro Acosta of the National Police. The Police Board mistakenly questioned Major Olimpo Acosta Cuevas and not Major Mauro Acosta⁵⁵, and then dismissed the veracity of the calls because they came from "public telephones" and because they were "aimed at upsetting and lowering the spirits of the relatives" of the victim⁵⁶. Finally, the Police Board requested the next-of-kin and the members of the Truth Commission to "visit the National Police Palace to see for themselves if the aforementioned Professor Narciso González was detained" there⁵⁷

71 On June 29, 1994, the Police Board ordered a forensic examination of the SUV with license plate 0-11172 in which Narciso González Medina was reputedly detained. However, the Police Board, in an apparent "typing error," put the SUV's license plate as 0-11672, as a result of which the examination was carried out on a vehicle different to the one indicated by the next-of-kin⁵⁸

72 The Police Board investigated the victim's relationship with his wife, family, and friends. It also investigated his personal preferences and other aspects of his private life.⁵⁹ In this regard, one of the members of the Police Board of Inquiry stated that:

In the investigation of the family and close acquaintances of PROF. NARCISO GONZÁLEZ we determined that the aforementioned () and his wife, Mrs. Altigracia Ramírez had personal differences to the extent that they did not sleep in the same bed. In addition we determined that PROF. NARCISO GONZÁLEZ had countless debts, given that in our interviews of persons connected with him they drew our attention to the fact that () he owed them various sums of money. We also determined that he gambled regularly, including on horse races⁶⁰

73 Based on information which suggested that Narciso González Medina had been buried in the family tomb of Manuel Vanega Rivas at Montecristi Cemetery, on July 5, 1994, the Police Board carried out an exhumation, but the outcome was not positive⁶¹

⁵³ Annex 12. Letter from the Truth Commission to the Chief of the National Police dated February 22, 1995; Annex 13. Statement of Rafael Oscar Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998

⁵⁴ Annex 14. Statement of Luis Manuel Tejeda Fernández, September 10, 1998; Annex 13. Statement of Rafael Oscar Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998; Annex 13. Statement of Rafael Guerrero Peralta to the State Secretariat of the Armed Forces, June 24, 1998

⁵⁵ Annex 14. Statement of Luis Manuel Tejeda Fernández, September 10, 1998; Annex 13. Statement of Rafael Oscar Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998; Annex 13. Statement of Rafael Guerrero Peralta to the State Secretariat of the Armed Forces, June 24, 1998

⁵⁶ Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces; Annex 14. Statement of Rafael Bencosme Candelier, December 5, 1996; Annex 14. Statement of Manuel R. Núñez Paulino, December 9, 1996

⁵⁷ Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces

⁵⁸ Annex 12. Letter from the Truth Commission to the Chief of the National Police, February 22, 1995; Annex 13. Statement of Rafael Oscar Bencosme to the State Secretariat of the Armed Forces, June 18, 1998

⁵⁹ Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces; Annex 14. Statement of Luis Manuel Tejeda Fernández, December 3, 1996

⁶⁰ Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces

⁶¹ Annex 13. Statement of Manuel Vanegas Rivas to the State Secretariat of the Armed Forces, June 2, 1998

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74 The mandate of the Police Board had severe limitations. In that regard, one former member of the Police Board of Inquiry, Luis Manuel Tejeda Fernández said that "the Board lacked the authority to investigate [several] individuals for one logical reason, which is that all of those mentioned were part of the power structure that was governing at the time," and that "within those civilian power structures [] there were also military officials, including the Chief of Police at the time "How, then, do think that case could have been investigated without the members of the Board being harmed?"⁶²

75 An example of this situation was that, with respect to the presence of Narciso González Medina in El Mercadillo, the Police Board did not interview any members of the Armed Forces "because the chief of police [] recommended that no on-site investigations be carried out in that connection, due to the fact that it would tarnish the institution's reputation and image"⁶³.

76 Even the Mixed Board concluded that "the National Police Board of Inquiry [h]ad serious flaws and did not carry out the investigation diligently. The low rank of the Board's members meant that they lacked authority to question their own superiors "⁶⁴

77. On October 25, 1994, the Police Board issued a report that remained secret for several months. On February 22, 1995, the Truth Commission had access to said report and in a letter to the Chief of the National Police made, *inter alia*, the following objections:

- a. The report described Narciso González as "missing" as opposed to disappeared;
- b. The report was filed on May 28, 1994, and the Police Board began the search seven days later;
- c. The forensic examination was carried out on a jeep with license plate 0-11672, rather than the vehicle with license plate 0-11172;
- d. The real aim of the investigation was to attempt to expose possible contradictions in the statements of Mrs. Luz Altagracia Ramírez;
- e. The Report said that Narciso González Medina was possessed of a "preternatural intelligence," which he could use to engineer any situation, including his own disappearance;
- f. Despite having put a wiretap on the telephone of Narciso González Medina's residence, the police did not trace the origin of several of the calls in which information was provided on the whereabouts of the victim; and
- g. The Police Board of Inquiry did not draw up any charges.⁶⁵

78 The Police Board of Inquiry did not reach any conclusions nor did it specifically charge anyone with responsibility in connection with the disappearance of Narciso González.⁶⁶

2. Joint Committee (Junta Mixta)

⁶² Annex 13 Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces; Annex 13 Statement of Rafael Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998; Annex 14 Statement of Rafael Bencosme Candelier, December 5, 1996; Annex 13 Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

⁶³ Annex 14 Statement of Luis Manuel Tejeda Fernández, September 10, 1998.

⁶⁴ Annex 13 Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

⁶⁵ Annex 12 Letter from the Truth Commission to the Chief of the National Police dated February 22, 1995.

⁶⁶ Annex 13 Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

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79 On April 21, 1998, the then-President of the Republic, Leonel Fernández Reyna, ordered the creation of a Mixed Board of Inquiry composed of representatives of the Office of the Secretary of State for the Armed Forces, DNI, and National Police with the assistance of the Prosecutor General, in order to clarify the events connected with the disappearance of Mr. Narciso González.⁶⁷

80 In the course of the Board's proceedings various testimonies were heard regarding the arrest and subsequent disappearance of Narciso González Medina. In August 1998, the Mixed Board submitted a "Report of the Office of the Secretary of State for the Armed Forces" to President Leonel Fernández and the Prosecutor General.⁶⁸

81 The "Report of the Office of the Secretary of State for the Armed Forces" stated that "the fact that four (4) years have elapsed since Professor Narciso González Medina went missing [] without, as yet, any knowledge of his whereabouts are factors that have allowed the dissipation of specific evidence that could have helped to clarify the case [] another factor of a similar nature to the foregoing being the circulation of contradictory accounts. Among others, the Report reached the following conclusions:

- Mr. Narciso González was "missing;"
- The hypothesis suggesting that the operation in which Juan Dionisio Marte took part had been for the arrest of Narciso González Medina;
- No evidence had been found that Narciso González Medina had been taken as a detainee to the facilities of J-2, the DNI, or A-2; and
- The Police Board of Inquiry was limited in its scope of action, chiefly due to the impossibility of interrogating certain military officials.⁶⁹

82 On August 5, 1998, President Leonel Fernández described the report of the Mixed Board of Inquiry as provisional. At this writing, the Mixed Board of Inquiry has yet to issue a final report.⁷⁰

G. Judicial proceedings

1. First criminal complaint

83 On May 26, 1995, Luz Altagracia Ramírez, Amaury González Ramírez, Ernesto González Ramírez, Rhina Yocasta González Ramírez, and Jennie Rosanna González Ramírez filed a criminal complaint that included a claim for civil damages with the Examining Magistrate of the Seventh Court in and for the National District, for violation of Articles 265, 266, 267 (conspiracy to commit crime), 295, 296, 297, 298, and 304 (homicide) of the Criminal Code, as well as Law 583 (Law on Abduction) to detriment of Narciso González Medina.⁷¹ The aforesaid action was registered as Case 205 of 1995 with the Seventh Examining Court in and for the National District.⁷²

⁶⁷ Annex 13 Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

⁶⁸ Petitioners' communication dated November 10, 2005. See Appendix 3.

⁶⁹ Annex 13 Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

⁷⁰ Petitioners' communication dated November 10, 2005. See Appendix 3.

⁷¹ Annex 9 Criminal complaint filed with the Seventh Examining Magistrate's Court of the National District, May 26, 1995.

⁷² Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001.

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84 In the complaint, the next-of-kin of Narciso González Medina specifically requested the court to:

a Investigate and question the persons who were named by Dr. Narciso González in the article published in the April-May edition of *La Muralla* magazine (pp 26-27) and in the address to the Assembly of Faculty Members of the UASD on May 25, 1994, one day before his disappearance, namely: Guaroa Liranzo, Anibal Paez, Juan José Arteaga, Rafael Bello Andino, Ramón Pérez Martínez (also known as Macoris), in addition to the Chief of the National Police, the head of the Air Force, and the head of the Army at the time of Narciso's disappearance

b Investigate and question Lieutenant Commander Luis Rafael Lee Ballester, former private Miguel E. Bonilla, former Major Viriato Alcides Brito Pillier, as well as Manuel Vanegas, Claudio de los Santos, Major Olimpo Cuevas Acosta (a.k.a. El Bronco), and Colonel Reyes Bencosme, in relation to which persons the complainants and a number of witnesses shall in due course set out concrete facts directly and indirectly connected with the crimes charged; and

c Obtain statements from Mr. Joaquín Balaguer, President of the Republic, [] regarding the reasons for his proposal to the next-of-kin of Narciso González to hire foreign investigators for this case, and as regards his affirmation that it was "a difficult crime to solve" at a time when Dr. Narciso González was not yet presumed dead.⁷³

85 Several persons were questioned in the course of the judicial proceedings, including some who had testified to the Mixed Board of Inquiry. The vast majority of persons questioned ratified their testimonies. However, the military official who admitted his involvement in the operation to arrest Narciso González and who had said on at least two occasions that he was afraid on account of testifying retracted himself, saying that he was confused and did not recall if the operation was "connected with Professor Narciso González."⁷⁴

86 No subsequent steps were taken in the judicial proceeding to investigate why the aforesaid official retracted himself. Nor was any attempt made to determine the source of the witness's fear and his second testimony was validated.

87 Testimonies were also heard from police and military personnel, the members of the Police Board of Inquiry, the next-of-kin of the victim, and the members of the Truth Commission, among others.

88 On January 8 and 28, and March 8, 1999, the Examining Judge issued warrants for the pre-trial detention of Leonardo A. Reyes Bencosme, Manuel Concepción Pérez Volquez, and Constantino Matos Villanueva.⁷⁵

89 On August 21, 2001, more than six years after the family filed their criminal complaint, the Seventh Examining Court in and for the National District issued decisions 195/2001 and 110/2001. In those decisions, the court did not make a determination about the causes and events connected with disappearance of Narciso González Medina. The court's reasoning was largely based on the impossibility of charging anyone with Narciso González Medina's disappearance because "Narciso González's disappeared status has not been legally

⁷³ Annex 9. Criminal complaint filed with the Seventh Examining Magistrate's Court of the National District, May 26, 1995.

⁷⁴ Annex 14. Statement of Juan Dionisio Marte, January 12, 1999.

⁷⁵ Annex 14. Seventh Examining Magistrate's Court of the National District. Decisions 195/2001 and 110/2001, August 24, 2001.

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and judicially determined and it was unknown what the circumstances were by which to determine with absolute certainty that his life might have been in danger."⁷⁶

90 In particular, the decisions found that:

- a Although it has been rumored that the cause of the disappearance ha[d] to do with the publication of an article entitled "10 razones por las cuales Balaguer es un perverso [Ten reasons why Balaguer is evil]" and with opinions he expressed at Universidad Autónoma de Santo Domingo some days after the elections, no one has managed to verify the truth of these rumors⁷⁷;
- b [I]t is a condition *sine qua non* to establish Professor Narciso's disappeared status in order to charge an individual or the accused with his death or disappearance, which has not happened due to the absence of evidence and indicia by which to establish an imputable violation because his disappearance has not confirmed⁷⁸;
- c [T]he whereabouts of the professor or his corpse are unknown, and no one has offered reliable testimony as to where he might be, or that they saw him at the time of his disappearance or thereafter, that might provide an indication of his whereabouts or supposed death;⁷⁹
- d [As Silvestre Batista] died, [it is] impossible to question him and, consequently, ascertain the reliability of [his] statement[s];⁸⁰;
- e [I]f [. . .] the examining judge finds [that] the accumulated evidence is not sufficient to show that a crime has been committed, they should not remand an accused to criminal court because the examining judge should always look for probable cause. [. . .] since, if the evidence is not serious, precise, and consistent with the deed and the accused, the initiation of a criminal trial is out of order;⁸¹ and
- f [There is nothing to show] that after the disappearance of Professor Narciso González [demands were made for] sums of money in return for [his] release⁸²

91 By the same token, in the aforesaid decisions, the court ruled that "even though [t]he law provide[d] a time limit of two months to conclude the preliminary inquiry before the examining judge, said time limit is reasonable for cases in which persons have been detained or deprived of liberty" and that "for complex cases like the one under examination [. . .], it is not possible to set a fixed time limit on the criminal proceeding"⁸³

92. The decisions resolved not to commit Manuel Pérez Volquéz and Leonardo Reyes Bencosme for trial "because no serious, precise and consistent evidence existed that suggests their criminal responsibility." However, it was decided to commit Constantino Matos

⁷⁶ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁷⁷ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁷⁸ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁷⁹ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁸⁰ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁸¹ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁸² Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

⁸³ Annex 14 Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

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Villanueva for trial for the crime of wrongful detention recognized at Article 114 of the Dominican Criminal Code⁸⁴

93. On August 27, 2001, both Constantino Matos Villanueva and Narciso González Medina's next-of-kin filed an appeal with the Court of Appeals of Santo Domingo, challenging decisions 195/2001 and 110/2001 of the Seventh Examining Court in and for the National District⁸⁵.

94. On December 18, 2002, the Court of Appeals of Santo Domingo found that there was insufficient evidence to conclude that Constantino Matos Villanueva gave orders to follow and detain Narciso González Medina. The Chamber described as "speculative" the testimony of Carlos Batista Rivas that his brother had confessed to him that he had seen Narciso González Medina at the A-2 facility known as "El Mercadito"⁸⁶. By the same token, the aforesaid tribunal considered that "none of the statements made by the informants or the documents presented in this case [led] to the conclusion that the accused as a whole, or any of them individually [had] planned, ordered, attempted, or carried out measures intended to disappear Narciso González or violate his physical integrity"⁸⁷. Finally, the Court of Appeals decided to throw out the criminal indictment against Constantino Matos Villanueva "for lack of serious, sufficient, precise and consistent evidence to warrant its referral to criminal court"⁸⁸.

2. Refiling of the complaint

95. On May 26, 2004, the family of Narciso González reiterated the criminal complaint with a claim for civil damages to the Judge of Seventh Examining Court in and for the National District against Joaquín Balaguer, Guaroa Liranzo, Constantino Matos Villanueva, Rafael Romero Cintrón, Rafael Guerrero Peralta, Claudio de los Santos, Juan Bautista Rojas Tobar, and Leonardo Reyes Bencosme, alleging violation of Articles 265, 266, 295, 296, 297 and 304 of the Criminal Code and Law 583 to the detriment of Narciso González Medina⁸⁹.

96. The information available suggests that the State did not respond to this petition. Two years later, on August 22, 2006, the Seventh Examining Court in and for the National District sent an affidavit on the status of the proceeding, which mentioned that the case had been set aside following the judgment of December 18, 2002 of the Court of Appeals of Santo Domingo.

97. On May 2, 2007, the State informed the IACHR of its decision to reopen the investigation into the disappearance of Mr. Narciso González Medina. It is not known what proceedings have been conducted since this reopening.

3. Loss and destruction of documents

98. In at least three of the four government agencies where Narciso González Medina was seen official documents or duty rosters that corresponded precisely to the dates mentioned in the testimonies of the witnesses were lost or altered.

⁸⁴ Annex 14 Seventh Examining Magistrate's Court of the National District. Decisions 195/2001 and 110/2001 August 24, 2001.

⁸⁵ Annex 15 Cámara de Calificación of Santo Domingo. Decision of December 18, 2002.

⁸⁶ Annex 15 Cámara de Calificación of Santo Domingo. Decision of December 18, 2002.

⁸⁷ Annex 15 Cámara de Calificación of Santo Domingo. Decision of December 18, 2002.

⁸⁸ Annex 15 Cámara de Calificación of Santo Domingo, Decision of December 18, 2002.

⁸⁹ Annex 10 Deposit of addendum to criminal complaint with civil party application.

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99 The original J-2 duty rosters corresponding to May 25, 26 and 27, 1994, disappeared and were replaced with new rosters that contained inconsistencies. In that regard, former army captain Antonio Quezada Pichardo said that "the only reason that [he could think of] why those rosters should have disappeared [...] was to get rid of evidence" and that this situation "suggest[ed] that there [was] something unusual."⁹⁰

100. Former army captain Antonio Quezada Pichardo also said that some time after Narciso González Medina had been at J-2, Colonel Francisco Estévez Ramírez burnt official documents as General Matos Villanueva watched. Former army captain Antonio Quezada Pichardo said that he was "much surprised" by this fact because documents concerning the Office of the Secretary of the Armed Forces were not normally destroyed there.⁹¹ Colonel Estévez testified that he "was not in the habit of burning papers" and that "it [was] his understanding that when these documents [went] out of date with time, S-4, which is in charge of [...] archives [...] gets rid of them" and "while [...] at J-2 [he] recall[ed] that a number of papers from the whole agency were burnt because they were obsolete."⁹²

101 Major Damián Enrique Arias Matos, Head of the National Police Forensics Unit, said that in November or December 1996 he received instructions to deliver a paper shredder (which was supposedly) used to [destroy] some duty rosters that [had been] removed from the archive and though [he] did not see the names [he] distinctly recall[ed] that they were dated May 26 1994."⁹³

102 Some duty rosters were also lost that allegedly contained information about the detention of Narciso González at the A-2 facility.⁹⁴

V. CONSIDERATIONS OF LAW

A. General considerations regarding the forced disappearance of persons

103 In its consistent case law on cases of forced disappearance of persons, the Inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the disappearance forms part of a systematic pattern or practice applied or tolerated by the State. In brief, it is a crime against humanity involving a gross rejection of the essential principles on which the Inter-American system is based.⁹⁵

⁹⁰ Annex 13. Statement of Antonio Quezada Pichardo to the Office of the Public Prosecutor for the National District, March 12, 1998; Annex 14. Statement of Francisco Dolores Estévez Ramírez, March 23, 1999.

⁹¹ Annex 13. Statement of Antonio Quezada Pichardo to the Office of the Public Prosecutor for the National District, March 12, 1998.

⁹² Annex 14. Statement of Francisco Dolores Estévez Ramírez, March 23, 1999.

⁹³ Annex 13. Statement of Damián Enrique Arias Mayos to the State Secretariat of the Armed Forces, June 15, 1998.

⁹⁴ Annex 13. Statement of Leonardo Reyes Bencosme to the State Secretariat of the Armed Forces, June 2, 1998; Annex 14. Statement of Leonardo Reyes Bencosme, January 10, 1997.

Mr. Reyes Bencosme said that "yes, he [understood] that some duty rosters were lost around that time."

⁹⁵ Corte I.D.H., Caso Goiburú y otros. Sentencia sobre Fondo. Reparaciones y Costas. Sentencia de 22 de septiembre de 2006. Serie C No. 153, párr. 82; Caso Gómez Palomino. Sentencia de 22 de noviembre de 2005. Serie C No. 136, párr. 92; Caso de las Hermanas Serrano Cruz. Excepciones preliminares. Sentencia de 23 de noviembre de 2004. Serie C No. 118, párrs. 100 a 106; y Caso Molina Theissen. Reparaciones (Art. 63(1), American Convention on Human Rights). Sentencia de 3 de julio de 2004. Serie C No. 108, párr. 41; CIDH, Informe No. 101/01. Caso 10.247 y otros. Ejecuciones extrajudiciales y desapariciones forzadas de personas. Perú. 10 de octubre de 2001. Párr. 178.

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104. In its judgment in *Goiburú v. Paraguay*,⁹⁶ the Court offered the following review of the international treatment of forced disappearance:

Although the international community adopted the first declaration and the first treaty using the term forced disappearance of persons only recently in 1992 and 1994, respectively, already in the 1970s, the issue as such was examined in international human rights law and was developed within the framework of the United Nations system as of the 1960s.⁹⁷ The inter-American regional system had frequently used this term to refer to this series of acts and violations as a crime against humanity.⁹⁸ It is even described as such by Article 7(1)(i) of the 1998 Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed against any civilian population.⁹⁹ This description of the offense in reference has been reiterated in the text of Articles 5 and 8(1)(b) of the United Nations International Convention for the Protection of All Persons from Forced Disappearance, adopted by the recently created United Nations Human Rights Council in June 2006.¹⁰⁰

105 According to the Inter-American Court,

the need to consider integrally the offense of forced disappearance of an autonomous continuing or permanent nature, composed of multiple elements with their complex interrelationships and related criminal acts, can be deduced not only from its definition in the abovementioned Article III of the Inter-American Convention on Forced Disappearance of

⁹⁶ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006 Series C No. 153 par. 82.

⁹⁷ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006 Series C No. 153 par. 82. Cf. The establishment of the Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights, by Resolution 20 (XXXVI) of February 29, 1980 is a clear demonstration of general censure and repudiation of the practice of disappearances, which had already received world attention by the General Assembly (Resolution 33/173 of December 20, 1978), the Economic and Social Council (Resolution 1979/38 of May 10, 1979) and the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Resolution 5B (XXXII) of September 5, 1979). The reports of the Special Rapporteurs or representatives of the Commission on Human Rights show concern that the practice of disappearances be stopped, that the victims reappear, and that those responsible be punished (*Velásquez Rodríguez Case* Judgment of July 29, 1988 Series C No. 4, par. 151. Likewise, the *Godínez Cruz Case*, par. 159 and *Fairén Garbí and Solís Corrales Case* Judgment of March 15, 1989 Series C No. 6, par. 146). The following resolutions of the United Nations General Assembly should also be cited: Resolution 3450 (XXX) of December 9, 1975, thirtieth session, on the question of missing persons in Cyprus as result of the armed conflict; Resolution 32/128 of December 16, 1977, thirty-second session, proposing the establishment of a body to investigate the disappearances in Cyprus "impartially, effectively and speedily" and Resolution 33/173 of December 20, 1978, thirty-third session, entitled "Disappeared Persons," in which the General Assembly expressed its deep concern owing to "reports from various parts of the world relating to enforced or involuntary disappearances of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations," as well as its concern about "reports of difficulties in obtaining reliable information from competent authorities as to the circumstances of such persons" and indicating that there was a "danger to the life, liberty and physical security of such persons arising from the persistent failure of those authorities or organizations to acknowledge that such persons are held in custody or otherwise to account for them."

⁹⁸ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006 Series C No. 153 par. 82. Cf. Resolution AG/RES. 666 (XIII-O/63) of November 18, 1983, and resolution AG/RES. 742 (XIV-O/84) of November 17, 1984, of the General Assembly of the Organization of American States. Also, cf. Inter-American Commission on Human Rights Annual Report 1983-1984 Chapter IV, pars. 8, 9 and 12, and Chapter V, 13. OEA/Ser.LV/II 63 doc. 10 of September 28, 1984; Annual Report 1986-1987 Chapter V II. OEA/Ser.LV/II 71 Doc. 9 rev. 1 of September 22, 1987; Annual Report 1987-1988 Chapter IV. OEA/Ser.LV/II 74 Doc. 10 rev. 1 of September 16, 1988; Annual Report 1990-1991 Chapter V. OEA/Ser.LV/II 79, Doc. 12 rev. 1 of February 22, 1991, and Annual Report 1991 Chapter IV. OEA/Ser.LV/II 81 Doc. 6 Rev. 1 of February 14, 1992.

⁹⁹ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006 Series C No. 153 par. 82. Cf. Rome Statute of the International Criminal Court adopted on July 17, 1998, by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an international criminal court, A/CONF.183/9.

¹⁰⁰ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006 Series C No. 153, par. 82. Cf. United Nations Human Rights Council International Convention for the Protection of all Persons from Forced Disappearance. First session, agenda item 4, A/HRC/1/L.2, June 22, 2006.

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Persons, the *travaux préparatoires* for this instrument,¹⁰¹ its preamble and provisions, but also from Article 17(1) of the 1992 United Nations Declaration on the Protection of all Persons from Forced disappearance, which even adds one further element, related to the obligation to investigate, by indicating that this must be considered "a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts have not been clarified." International case law also reflects this understanding¹⁰² as do Articles 4 and 8(1)(b) of the above-mentioned United Nations international convention on this matter.¹⁰³

106 Among the distinctive characteristics of disappearance are the means used to carry it out, which are designed to conceal any evidence of the facts, the corresponding responsibility, and the fate of the victim. Another feature is the manner in which the failure to elucidate the facts and identify those responsible affects not only the direct victim, but also their family and society in general.

107 In keeping with its consolidated case law, the Commission finds that forced disappearance is a complex human rights violation that continues in time so long as the whereabouts of the victim or of their remains are not known. The Commission has adopted an integral approach to this human rights violation, understanding it as a continuing violation of several rights. This approach enables it to analyze and determine the full extent of the State's responsibility. It should be borne in mind that so long as the whereabouts of the victim are not determined or their remains located, the family and the rest of society must endure the experience of a forced disappearance with all the attendant consequences.

108 As indicated in the section on jurisdiction, although the Dominican State is not a party to the Inter-American Convention on Forced Disappearance of Persons, the definition established in the Convention can be used for this analysis because it reflects the jurisprudence of the bodies of the Inter-American System and represents a consensus on this subject.¹⁰⁴ Article II of said instrument states that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

109 In that connection, it is fair to say that the cumulative elements that comprise all forced disappearance are: 1) deprivation of liberty, 2) direct involvement of governmental officials

¹⁰¹ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153, par. 82. Cf. Annual Report of the Inter-American Commission on Human Rights, 1987, 1988, Chapter V II. This crime "is permanent because it is committed permanently, rather than instantaneously, and it continues while the person remains disappeared" (OEA/CP-CAJP, Report of the President of the Working Group responsible for examining the draft Inter-American Convention on Forced Disappearance of Persons, doc. OEA/Ser.G/CP/CAJP-925/93 rev. 1, of January 25, 1994, p. 10).

¹⁰² I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153, par. 82. Cf. *European Court of Human Rights, Cyprus v. Turkey, Judgment of 10 May 2001*, Application No. 25781/94, paras. 136, 150 and 158; United Nations Human Rights Committee, *Ivan Somors v. Hungary*, Communication No. 566/1993, 57th session, CCPR/C/57/D/566/1993 (1996), 23 July 1996, para. 6.3; *E. and A.K. v. Hungary*, Communication No. 520/1992, 50th session, CCPR/C/50/D/520/1992 (1994), 5 May 1994, para. 6.4, and *Solorzano v. Venezuela*, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983, 26 March 1986, Para. 5.6.

¹⁰³ I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153, par. 83.

¹⁰⁴ See Concurring Opinion of Judges García-Sayán and García Ramírez in the *Case of Ticona Estrada et al.* I/A Court H.R., *Case of Ticona Estrada et al. v. Bolivia*, Merits, Reparations and Costs Judgment of November 27, 2008. Series C No. 191.

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or acquiescence thereof, 3) refusal to acknowledge the deprivation of liberty and to disclose the fate and whereabouts of the victim¹⁰⁵

110 Therefore, the Commission must analyze the established facts in the instant case to determine if they conform to the concept of forced disappearance as defined in the preceding paragraphs

111 The Commission takes as proven that Narciso González Medina disappeared on May 26, 1994, on which date an arrest operation was mounted in which state security agents took part

112 It has also been established that on the days following the point after which his family had no further news of him, Narciso González was seen at different police and military facilities in the custody of state agents. The testimonies concerning his presence at these places are the last news that was had of Mr. González Medina

113 The Commission has verified that when his next-of-kin went in search of him all of the officials with whom they had dealings consistently denied that Narciso González was in the custody of the State. The Commission also takes as proven that in the investigations conducted at the domestic level, the vast majority of officials involved continued to deny their participation

114 Furthermore, as is developed in the section on the rights recognized in Articles 8 and 25 of the Convention, the multitude of irregularities in those investigations has contributed to the cover-up of what happened. In spite of the fact that Narciso González was last seen at government facilities, there is still no official version of the fate of the victim. In short, not only has the State not provided a satisfactory explanation, it has failed to offer any explanation at all of Narciso González's disappearance

115 Based on the foregoing, the Commission finds that the constituent elements that comprise forced disappearance are present in the instant case and, therefore, concludes that Narciso González Medina was a victim of forced disappearance. This situation continues into the present, given that since he was seen in state custody nothing is known of the fate or whereabouts of Mr. González Medina or his remains.

116 In accordance with its usual practice, the Commission will explain below the specific violations of the American Convention that have occurred as a result of the victim's forced disappearance

B. Rights to personal liberty, humane treatment and life (Articles 7, 5, 4 and 1(1) of the American Convention)

117 The pertinent portions of Article 7 of the American Convention provide:

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

¹⁰⁵ *Inter alia* see I/A Court H.R., *Case of Gómez Palomino*, *Supra* note 116, par. 97; and I/A Court H.R., *Case of Heliodoro-Portugal*, *Supra* note 117, par. 110

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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.

118 The pertinent portions of Article 5 of the American Convention provide:

- 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.

119 The pertinent portions of Article 4 of the American Convention provide:

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

120 The Inter-American Court has held, "Article 7 of the [American] Convention contains two distinct types of regulations: one general, the other specific. The general one is contained in the first subparagraph: [e]very person has the right to personal liberty and security; while the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7(2)) or in an arbitrary manner (Art. 7(3)), to be informed of the reasons for the detention and the charges brought against him (Art. 7(4)), to judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7(5)), to contest the lawfulness of the arrest (Art. 7(6)), and not to be detained for debt (Art. 7(7))."¹⁰⁶ The Court has held that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof, because the failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.¹⁰⁷

121 For its part, the Commission has determined that a detention is arbitrary and illegal when not carried out for the reasons, and according to the formalities, established by law; when carried out without adherence to the standards established by law; and when it involves misuse of the authority to arrest—in other words, when carried out for purposes other than those envisaged and stipulated by law.¹⁰⁸

122 Furthermore the Inter-American Court has stated that in cases of forced disappearance it is unnecessary to perform a detailed analysis of the arrest in relation to each of the guarantees recognized in Article 7 of the American Convention. In the opinion of the Court, when it is proven that the deprivation of liberty was a step prior to the execution or disappearance of the victims, it is not necessary to determine, for instance, whether or not the alleged victims were informed of the reasons for their detention; whether or not said detention was effected regardless of the motives and conditions established in the legislation in force at the time of the events, or whether the act of the detention was unreasonable, unpredictable or disproportionate.¹⁰⁹

123. The foregoing is precisely for the reason that when examining an alleged forced disappearance it should be taken into account that the deprivation of liberty of the individual must

¹⁰⁶ I/A Court H.R., *Caso de Chaparro-Álvarez and Lupo-Iniguez*, Judgment of November 21, 2007, Series C No. 170, par. 51.

¹⁰⁷ I/A Court H.R., *Caso de Chaparro-Álvarez and Lupo-Iniguez*, *Supra* note 122, pars. 54.

¹⁰⁸ IACHR, Report 55/99 (Cases 10.815, 10.905, 10.981, 10.995, 11.042, 11.136 – Peru), par. 96.

¹⁰⁹ I/A Court H.R., *Caso de La Cantuta*, Judgment of November 29, 2006, Series C No. 162, par. 109.

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be understood merely as the beginning of the constitution of a complex violation that is prolonged over time until the fate and whereabouts of the alleged victim are established.¹¹⁰

124. It has been demonstrated in the instant case that on May 26, 1994, Narciso González Medina was deprived of his liberty by state security agents. The Commission has already concluded that the victim's arrest was the first step in his forced disappearance and, therefore, it is irrelevant to analyze if the circumstances that surrounded his disappearance were in accordance with each of guarantees enshrined in Article 7 of the American Convention. On the contrary, the fact that Narciso González was forcibly disappeared following the arrest leads straight to the conclusion that the deprivation of liberty was illegal, arbitrary, and in disregard of the guarantees enshrined in that provision of the Convention.

125. The Inter-American Court has repeatedly held that "international human rights law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment" and that "the absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international jus cogens."¹¹¹

126. Furthermore, this Tribunal has held that forced disappearance violates the right to humane treatment enshrined in Article 5 of the Convention since "the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment [...] incompatible with paragraphs 1 and 2 of said Article." It is clear that in the case of a forced disappearance, the victim's personal integrity is affected in all its dimensions."¹¹²

127. The Commission has determined that Narciso González Medina was seen at four state agencies, at three of which witnesses said that he was in a very bad way, injured, and even "covered in blood." This is sufficient evidence that after his arrest Narciso González Medina was subjected to a series of acts that violated his physical integrity. Furthermore, it is reasonable to infer that in addition to the mistreatment to which he was deliberately subjected, he failed to receive the medical attention he needed to control his seizures. The Commission considers it logical to presume that the ailments from which Narciso González suffered were aggravated by his precarious state of health.

128. In addition, the unlawfulness and arbitrary nature of his detention, coupled with his clandestine transfer to various police and military facilities without his next-of-kin or anyone else being able to activate legal mechanisms on his behalf placed him in a state of vulnerability and defenselessness that also impaired his psychological and moral integrity. The particular way in which state officials act in cases of forced disappearance permits the assumption that the victim would have been able to foresee his fate and, therefore, experienced profound fear, anxiety and helplessness which, in the least serious of such situations, constituted cruel, inhuman and degrading treatment.¹¹³

129. With respect to the right to life, the Inter-American Court has repeatedly held that said right is a fundamental human right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.¹¹⁴ According to the Court, the foregoing means that States

¹¹⁰ I/A Court H.R. *Case of Ticona Estrada et al v. Bolivia*. Merits, Reparations and Costs Judgment of November 27, 2008. Series C No. 191, par. 56.

¹¹¹ I/A Court H.R., *Case of Bueno-Alves*. Judgment of May 11, 2007. Series C No. 164, par. 76; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 271; and I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 117.

¹¹² I/A Court H.R. *Case of Ticona-Estrada et al*. Judgment of November 27, 2008. Series C No. 191, par. 58.

¹¹³ The Court reached the same conclusion in I/A Court H.R., *Case of La Cantuta*, par. 113.

¹¹⁴ I/A Court H.R., *Case of Zambrano-Vélez et al*. Judgment of July 4, 2007. Series C No. 166, par. 78; I/A Court H.R. *The "Street Children" Case (Villagrán Morales et al)*. Judgment of November 19, 1999. Series C No. 63, par. 144.

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have both the obligation to guarantee the creation of the necessary conditions to ensure that violations of this basic right do not occur, as well as the duty to prevent its agents or private individuals from violating it.¹¹⁵ Indeed, the object and purpose of the American Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced, so that its guarantees are truly practical and effective (*effet utile*).¹¹⁶

130. The Court has also reiterated that "compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."¹¹⁷ Hence,

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.¹¹⁸

131. According to the Inter-American Court's case law, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the American Convention.¹¹⁹ The jurisprudence of the Inter-American system has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he has been killed.¹²⁰

132. In its reports on the human rights situation in countries that suffered under dictatorial regimes where forced disappearance was common practice the Inter-American Commission has explained the risk that this phenomenon entails for the right to life.¹²¹ The Inter-American Court has also recognized this risk.¹²² The purpose of the presumption of death developed in the case law of the Inter-American system is precisely to determine the full extent of international responsibility in cases of forced disappearance, including the inherent risk posed to the lives of individuals subjected to this deplorable practice. The purpose is also that states do everything in their power to establish the whereabouts of the victims and, as appropriate, disprove the presumed violation of the right to life.

133. The Commission has already concluded that the victim was forcibly disappeared. This occurrence was set in motion on May 26, 1994, Narciso Gonzalez having been seen for the

¹¹⁵ I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*, *Supra*, note 135, par. 144.

¹¹⁶ I/A Court H.R., *Case of Zambrano-Vélez et al.* *Supra*, note 135, par. 79; I/A Court H.R., *Case of Baldeón García*, *Supra*, note 127, par. 83.

¹¹⁷ I/A Court H.R., *Case of Zambrano-Vélez et al.* *Supra*, note 135, par. 80; I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*, *Supra*, note 135, par. 144.

¹¹⁸ I/A Court H.R., *Case of Zambrano-Vélez et al.* *Supra*, note 135, par. 81; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Calía)*, Judgment of July 5, 2006, Series C No. 150, par. 66.

¹¹⁹ I/A Court H.R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, par. 154; I/A Court H.R., *Bánica Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, par. 130.

¹²⁰ I/A Court H.R., *Velásquez Rodríguez Case*, *Supra*, note 118, par. 188.

¹²¹ IACHR, Report on the Situation of Human Rights in Chile, May 8, 1990, OEA/Ser.L/V/II 77 rev 1, Chapter III, par. 125.

¹²² On the risk to life posed by forced disappearance of persons, see I/A Court H.R., *Case of Ticona-Estrada et al.*, Judgment of November 27, 2008, Series C No. 191, par. 60.

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last time on the days immediately following in the custody of security agents at police and military facilities. To date, more than 15 years have passed and still nothing is known of his fate or whereabouts, or that of his remains.

134. Furthermore, while Narciso González Medina was in its custody, the State had the obligation to ensure his right to life. The State also has the obligation 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.¹²³

135. In the instant case the State has provided no explanation whatsoever about what happened to the victim, nor has it managed to disprove the presumption of death generally accepted in cases of forced disappearance of persons.

136. In addition to the foregoing the Commission finds that the Dominican State has failed to discharge its obligation to ensure the rights to personal liberty, humane treatment, and life examined in this section, by means of a meaningful, diligent, and impartial investigation into the forced disappearance of Narciso González Medina. As is analyzed in detail in the section on rights guaranteed by Articles 8 and 25 of the American Convention, the procedural measures adopted by the State to determine what happened were plagued with irregularities, delays, and ineptitude which, overall, have prevented the facts from being clarified and those responsible from being identified and punished.

137. On the basis of all of the foregoing considerations, the Commission requests the Inter-American Court to conclude and declare that the Dominican Republic has violated the rights to personal liberty, humane treatment and life enshrined in Articles 7, 5 and 4 of the American Convention in conjunction with the obligations of respect and protection established in Article 1(1) thereof, to the detriment of Narciso González Medina.

C. Right to recognition as a person before the law (Articles 3 and 1(1) of the American Convention)

138. The Inter-American Court has repeatedly held that, by virtue of the generally recognized principle known as *iura novit curia*, the fact that a violation is not alleged by the petitioners does not preclude its examination by the organs of the system. Under said principle "a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them."¹²⁴ By virtue of that principle, the IACHR will proceed also to examine the facts in the instant case in the light of Article 3 of the American Convention.

139. Article 3 of the American Convention states that,

[e]very person has the right to recognition as a person before the law

140. The Commission recalls that the right of recognition of juridical personality is an essential and necessary prerequisite in order to hold and exercise all rights, since without it, a

¹²³ I/A Court H.R., *Durand and Ugarte Case*, Judgment of August 16, 2000, Series C No. 68, par. 65; I/A Court H.R., *Cantoral Benavides Case*, Judgment of August 18, 2000, Series C No. 69, par. 55; *Bámaca Velásquez Case*, *Supra* note 140, pars. 152-153. The European Court of Human Rights has developed extensive case law on this subject: *Aksoy v. Turkey*, 18 December 1996, § 61, *Reports of Judgments and Decisions* 1996 VI; *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; *Tomasi v. France*, 27 August 1992, § 108-111, Series A no. 241-A.

¹²⁴ I/A Court H.R., *Case of Hilario Constantino and Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, par. 143.

person does not enjoy the protection and guarantees that the law offers, simply because they are invisible to it

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

142 The Commission also notes that since its earliest case law, the Court has consistently found that forced disappearance of persons comprises multiple offenses.¹²⁵ This multiple violation of a person's basic rights is possible for the very reason that the latter is held outside of the law and deprived of their juridical personality. Accordingly, and bearing in mind, moreover, the continuous nature of this crime, the Commission considers that in the case of forced disappearance it is not possible to establish that extinction of the person because it is impossible to determine whether or not the person is still alive. Therefore, one of the multiple rights abridged by forced disappearance is the right of victims of this practice to recognition of their juridical personality. Furthermore, the Commission finds that the mechanism through which violation of all the other rights infringed by forced disappearance is sought and achieved is precisely deprivation of juridical personality.

143. The violation of the right to legal personality that comes with forced disappearance is such 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.¹²⁶

144 In that regard, the Commission has held that:

The objective of those who perpetrate a disappearance is to operate beyond the margins of the law, to conceal all evidence of their crimes, and to escape any sanction. When a disappearance is carried out, the fundamental protections established by law are circumvented and the victim is left defenseless. For the victim, the consequence of an enforced disappearance is to be denied every essential right deemed to inhere in the very fact of being human. In this way, the act of enforced disappearance violates the right of the individual under Article 3 of the American Convention "to recognition as a person before the law."¹²⁷

145. These arguments have been consistently presented in the applications filed by the IACHR before the Court in the last years with regard to forced disappearance of persons.¹²⁸

¹²⁵ *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, par. 155; *IA Court H.R., Case of Heliodoro Portugal*, Judgment of August 12, 2008, Series C No. 186, paras. 106 and 112; *Case of Goiburú et al.*, Judgment of September 22, 2006, Series C No. 153, paras. 81 to 85; and *Case of Gómez Palomino*, Judgment of November 22, 2005, Series C No. 136, par. 92.

¹²⁶ 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.

¹²⁷ See IACHR, Report 11/98, Case 10.606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, par. 57, available at <https://www.cidl.org/annualrep/97eng/Guatemala10606.htm>

¹²⁸ IACHR Applications before the Inter-American Court in the cases: Renato Ticona Estrada *et al.* (12 527) paras. 153-165; Rosendo Radilla Pacheco (12 511) paras. 138-145; Kenneth Ney Anzualdo Castro (11 385), paras. 167-176; Julia Gómez Lund *et al.* (11 552), paras. 208-220; Florancio Chitay Nech (12 599), paras. 136-146; Rainer Ibsen Cárdenas and José Luis Ibsen Peña (12 529) paras. 251-262.

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146 In keeping with the foregoing, the UN Human Rights Committee has concluded that one of the violations that may result from forced disappearance is a denial of the victim's right to recognition as a person before the law:

The Committee points out that intentionally removing a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person before the law if the victim was in the hands of the State authorities when last seen and, at the same time, if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies () have been systematically impeded. In such situations, disappeared persons are in practice deprived of their capacity to exercise entitlements under law, including all their other rights under the Covenant, and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law.¹²⁹

147 In a recent judgment, the Inter-American Court has recognized that, in view of its multiple and complex character, forced disappearance can entail a violation of the right to juridical personality. Specifically the Court found that "apart from the fact that the disappeared person is unable to continue to enjoy and exercise other rights -- or indeed any of their rights, their disappearance seeks not only one of the most serious forms of removing a person from every sphere of the legal system, but also to deny their very existence and leave them in a type of limbo or indeterminate legal situation in the eyes of society, the State, and even the international community."¹³⁰

148 In the instant case, the objective of the disappearance of Narciso González Medina was to deprive him of his juridical personality, thereby leaving them outside the legal and institutional system. Indeed, the forced disappearance was assured by the impossibility for the victim and his next-of-kin to seek judicial protection owing to the consistent denial of his deprivation of liberty and the systematic absence of any diligent investigation of his whereabouts. For Narciso González Medina, the consequence of the disappearance was to deny every essential right deemed too inherent in the very fact of being human by removing his due protection through the denial of his recognition as a person before the law.¹³¹

149 Therefore, in the instant case, the IACHR requests the Court to conclude and declare that the Dominican State has violated the right enshrined in Article 3 of the American Convention, in conjunction with the obligations established in its Article 1(1), to the detriment of Narciso González Medina.

D. Infringement of Article 13 (1) (right to freedom of expression) of the American Convention

150 The pertinent part of Article 13 of the American Convention recognizes that:

1 Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

¹²⁹ Human Rights Committee of the International Covenant on Civil and Political Rights. Communication 1327/2004 *Grioua v. Algeria*, para. 7.8 and 7.9.

¹³⁰ I/A Court H.R., Case of Anzualdo-Castro, Judgment of September 22, 2009, para. 90.

¹³¹ In a similar vein see: IACHR, Report 11/98 (Case 10 606 – Guatemala) para. 57; Report 55/99 (Cases 10 815, 10 905, 10 981, 10 995, 11 042, 11 136 – Peru) para. 111; Report 56/98 (Cases 10 824, 11 044, 11 124, 11 125, 11 175 – Peru) para. 110; Report 3/98 (Case 11 221 – Colombia) para. 64; Report 30/96 (Case 10 897 – Guatemala).

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2 The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability which shall be expressly established by law to the extent necessary to ensure:

- a respect for the rights or reputations of others; or
- b the protection of national security, public order, or public health or morals

151. The various regional systems and the universal system for protection of human rights all hold that freedom of expression performs a crucial function in the consolidation and workings of a democratic society.¹³² One of the most important obligations arising from this right is the duty of the State to ensure that no one suffers acts of aggression against their life or well-being, or any other unlawful restriction on their rights, as a result of exercising their right to freedom of thought and expression. This guarantee, as the Inter-American Court has held, is the "cornerstone" of a democratic society.¹³³

152. The case law of the inter-American system has explained on numerous occasions that freedom of expression is a right with two dimensions: an individual dimension that consists of the right of each individual to express their thoughts, ideas, and information; and a collective dimension, constituted by the right of society to seek and receive any information, to know the thoughts, ideas, and information of others, and to be well-informed.¹³⁴ Specifically, the Inter-American Court has found that the right to freedom of thought and expression grants those who are protected by the American Convention "not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds."¹³⁵

153. Indeed, the organs of the Inter-American system have held that freedom of expression is a means for the exchange of information and ideas among individuals and for mass

¹³² IACHR Case 11 500 *Tomás Eduardo Cirio (Uruguay)* October 27, 2006 par. 58; I/A Court H.R., *Case of Ricardo Canessa* Judgment of August 31, 2004 Series C No. 111, par. 86; I/A Court H.R., *Case of Herrera Ulloa* Judgment of July 2, 2004 Series C No. 107, par. 113; I/A Court H.R., *Ivcher Bronstein Case* Judgment of February 6, 2001 Series C No. 74, par. 152; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)* Judgment of February 5, 2001 Series C No. 73, par. 69. See also *Scharsach and News Verlagsgesellschaft v. Austria*, No. 39394/98, § 29, ECHR 2003-XI; *Perna v. Italy* [GC], no. 48898/98, § 39, ECHR 2003-V; *Dichand and others v. Austria*, No. 29271/95, § 37, ECHR 26 February 2002; *Lehideux and Isorni v. France*, 23 September 1998, § 55 *Reports of Judgments and Decisions* 1998-VII; *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103; *Sunday Times v. the United Kingdom* (No. 1), 26 April 1979, § 65, Series A no. 30; *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; UN Human Rights Committee *Aduayom et al. v. Togo* (422/1990, 423/1990 y 424/1990). Views adopted on 12 July 1996, par. 74; African Commission on Human and Peoples' Rights, *Media Rights Agenda and Constitutional Rights Project v. Nigeria* (Communication No. 105/93, 128/94, 130/94 and 152/96) Decision of 31 October 1998 par. 54.

¹³³ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85 of November 13, 1985 Series A, No. 5 par. 70; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)* Judgment of February 5, 2001, Series C No. 73, par. 68.

¹³⁴ I/A Court H.R., *Case of Kimal v. Argentina* Judgment of May 2, 2008 Series C No. 177, par. 53; I/A Court H.R., *Case of Claudio-Reyes et al.* Judgment of September 19, 2006 Series C No. 151 par. 75; I/A Court H.R., *Case of López Álvarez* Judgment of February 1, 2006 Series C No. 141, par. 163; I/A Court H.R., *Case of Herrera Ulloa* Judgment of July 2, 2004 Series C No. 107, par. 108; I/A Court H.R., *Ivcher Bronstein Case* Judgment of February 6, 2001 Series C No. 74, par. 146; I/A Court H.R., *Case of Ricardo Canessa* Judgment of August 31, 2004 Series C No. 111 par. 77; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)* Judgment of February 5, 2001, Series C No. 73 par. 64; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85 of November 13, 1985 Series A, No. 5, par. 30. See also, IACHR Report No. 130/99 Case No. 11 740 *Victor Manuel Oropeza (Mexico)*, November 19, 1999 par. 51; IACHR Report No. 11/96 Case No. 11,230, *Francisco Martorell (Chile)* May 3, 1996, par. 53. On the jurisprudence of the inter-American system in the area of freedom of expression see: IACHR, Annual Report 2008 Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III Inter-American Legal Framework of the Right to Freedom of Expression. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹³⁵ I/A Court H.R., *Case of López Álvarez* Judgment of February 1, 2006 Series C No. 141, par. 163; I/A Court H.R., *Case of Ricardo Canessa* Judgment of August 31, 2004 Series C No. 111, par. 77; I/A Court H.R., *Case of Herrera Ulloa* Judgment of July 2, 2004 Series C No. 107 par. 108.

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communication among human beings, which involves not only the right to communicate to others one's own point of view and the information or opinions of one's choosing but also the right of all people to receive and have knowledge of such points of view, information, opinions, reports and news, freely and without any interference that blocks or distorts them¹³⁵ It has also been specified in this respect that it is as important for the average citizen to have knowledge of others' opinions, or of the information made available by others, as it is for him to have the right to impart his own¹³⁷ Consequently, both dimensions of freedom of expression are of equal importance and interdependent, and should be guaranteed in full simultaneously¹³⁸

154 As is examined below, Article 13 of the American Convention includes a positive obligation for the State to provide its citizens with access to the information in its possession, and the corresponding right of individuals to access the information held by the State. The duty to ensure and protect the right of access to information also includes the obligation to produce and preserve the information necessary for individuals to exercise their basic rights¹³⁹

155 In the instant case, the IACHR will argue, on one hand, the violation of Article 13(1) of the American Convention to the detriment of Narciso González Medina and, on the other, the infringement of the right of access to information of his family. The former matter relates to the disappearance of Narciso González Medina as a consequence of his opposition to the government of Joaquín Balaguer. The latter concerns the restrictions imposed on the right of the family to access government documents and records (archives) regarding the forced disappearance of the alleged victim.

1. With respect to Narciso González Medina

156 As the IACHR has often reiterated, serious violations of human rights of individuals, such as murder, torture, or forced disappearance, as a result of their thoughts or opinions, are the most brutal and violent means of violating the right to freedom of expression. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR provides that "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation."

157 The forced disappearance of a person as a consequence of having expressed their thoughts and ideas coupled with the lack of investigation, prosecution and punishment of those responsible not only silences the victim of the crime but also has a profound impact on those who have the intention of expressing their ideas or opinions. The IACHR has reiterated that "the lack of an exhaustive investigation, that would lead to the punishment of all those responsible for the murder of the journalist, also constitutes a violation of the right to freedom of expression, due to the "chilling effect" of such impunity on every citizen."¹⁴⁰ It has also found that "the

¹³⁶ I/A Court H.R., *Case of Herrera Ulloa*, Judgment of July 2, 2004, Series C No. 107, par. 110; I/A Court H.R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111, par. 79; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*, Judgment of February 5, 2001, Series C No. 73, par. 66; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85 of November 13, 1985, Series A, No. 5, par. 32.

¹³⁷ I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*, Judgment of February 5, 2001, Series C No. 73, par. 66; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights) Advisory Opinion OC-5/85 of November 13, 1985, Series A, No. 5, par. 32.

¹³⁸ I/A Court H.R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111, par. 80; I/A Court H.R., *Ivcher Bronstein Case*, Judgment of February 6, 2001, Series C No. 74, par. 149; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*, Judgment of February 5, 2001, Series C No. 73, par. 67.

¹³⁹ I/A Court H.R., *Case of Claude-Reyes et al.*, Judgment of September 19, 2006, Series C No. 151, par. 77.

¹⁴⁰ IACHR Report No. 130/99, Case No. 11.740, *Victor Manuel Oropeza (Mexico)*, November 19, 1999, par. 47.

resignation by a State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society.¹⁴¹ The IACHR has also noted that "this sort of crime has a 'chilling effect' on other journalists, but also on every citizen, as it generates a fear of denouncing abuses, harassment and all kinds of illegal actions. The Commission considers that such an effect can only be avoided by swift action by the respective State to punish all those that may be responsible, as is its duty under international law and domestic law. Therefore, the [] State must send a strong message to society that there shall be no tolerance for those who engage in human rights violations of this nature."¹⁴²

158 The Inter-American Court has also held that serious human rights violations committed against individuals because they engage in a particular activity inhibits other persons seeking to engage in that activity. With respect to freedom of association and trade union rights, for example, in *Huilca Tecse* the Court considered that the execution of a trade union leader due to his political affiliation and criticism of the government, on one hand violated the freedom of association of the victim himself and, on the other, restricted the freedom of certain persons to associate freely without fear.¹⁴³

159 In a society that lived under a military dictatorship such as that of the Dominican Republic freedom of thought and expression acquires fundamental importance for the historic rebuilding of the past, the formation of a political culture and a vigorous public opinion, and the construction of political diversity that permits the recovery of democracy and the strengthening of the institutions of the rule of law. Moreover, in the framework of electoral processes that mark the transition to democracy, the two dimensions of freedom of thought and expression are a cornerstone without which the fundamental pillars for the rebuilding of democratic institutions are at risk. Only open, broad, and protected debate can lead to greater transparency and better control over elections and the administration of elected authorities.¹⁴⁴

160 In the case *sub judice*, it has been proven that Narciso González Medina was a well-known public-opinion leader opposed to the dictatorial regime of Rafael Leonidas Trujillo and the government of Joaquín Balaguer. An assessment of the evidence provided by the parties makes it fair to say that his disappearance came about as a result of these opinions and, in particular, his severe criticism of President Joaquín Balaguer and the election of May 16, 1994.

161 The serious allegations and critical opinions that Narciso González Medina leveled at senior government officials are demonstrated, *inter alia*, in the article published in *La Muralla* magazine entitled "*10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América*" [Ten reasons why Balaguer is the biggest evil to have emerged in the Americas], as well as in the speech he gave on May 25, 1994 at the UASD, one day before his disappearance. These allegations came, furthermore, in a climate of political unrest and amid profound doubts surrounding the elections of May 16, 1994. As mentioned, the irregularities found during the presidential poll led the OAS Electoral Observation Mission to extend its stay in the country by three months and conclude that "never before had there been a situation [such as this] in which the sheer scale of irregularities could have affected the outcome of the elections."¹⁴⁵

¹⁴¹ IACHR Report No. 50/99, Case 11 739 *Héctor Félix Miranda (Mexico)*, April 13, 1999, par. 52; IACHR Report No. 130/99, Case No. 11 740 *Victor Manuel Oropeza (Mexico)*, November 19, 1999, par. 58.

¹⁴² IACHR Report No. 130/99, Case No. 11 740 *Victor Manuel Oropeza (Mexico)*, November 19, 1999, par. 58.

¹⁴³ I/A Court H.R., *Case of Huilca Tecse*, Judgment of March 3, 2005, Series C No. 121, par. 66.

¹⁴⁴ I/A Court H.R., *Case of Ricardo Canessa*, Judgment of August 31, 2004, Series C No. 111, par. 88.

¹⁴⁵ In the same document, the OAS Electoral Observation Mission noted that, "[i]n addition to the accusations of fraud was the extreme polarization of the two main parties, between which the difference in the presidential vote was a

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162 Furthermore, in the section on proven facts and in the analysis of the crime of forced disappearance and the rights to personal liberty, humane treatment, life, and recognition of juridical personality, the Commission has already concluded that Narciso González was a victim of forced disappearance set in motion on May 26, 1994, when he disappeared after being deprived of liberty in the framework of an operation in which agents of the states took part. As was analyzed on the day of his disappearance and the days that followed, Narciso González Medina was seen in a very poor physical condition at four state facilities, and this is the last that was known of the victim. More than 15 years later still nothing is known of the fate or whereabouts of the victim or his remains.

163 In this regard, it is not remiss to mention that, in spite of the efforts of certain agents of the State to throw the investigations off the scent, it was impossible to sustain any other hypothesis than disappearance for political reasons.

164 It does not appear to be a coincidence that the arrest and disappearance of the victim occurred just one day after he gave his strongly worded speech at UASD denouncing the alleged fraud in the poll. As mentioned, the IACHR notes that in the record of the case it has been impossible to support any valid hypothesis other than that of forced disappearance for political reasons.

165 Furthermore, the irregularities and delays in the investigation of the forced disappearance of Narciso González Medina reinforce the presumption that the incident and the desire to cover it up were politically motivated. Indeed, as is explained in the following paragraphs, the record shows that the J-2 service rosters for May 25, 26 and 27, 1994 were altered, and that there were irregularities in the record books that allegedly contained information about Narciso González Medina's detention at the A-2 facility.

166 It is worth noting that as early as August 1998, in the Report of the Mixed Board, it was said that it was,

an incontrovertible reality that the fact that four (4) years had elapsed since Professor Narciso González Medina (a.k.a. Narcisazo) went missing [.] without, as yet, any knowledge of his whereabouts or the circumstances in which the foregoing occurred, are factors that ha[d] allowed the dissipation of specific evidence that could have helped to clarify the case.¹⁴⁶

167 Based on the foregoing, the IACHR finds that the arrest and forced disappearance of Narciso González Medina was politically motivated and stemmed from his accusations and opinions. Indeed, for the reasons described the IACHR concludes that the forced disappearance of Narciso González Medina was carried out by agents of the State and prompted by the publication of the article "*10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América*" [Ten reasons why Balaguer is the biggest evil to have emerged in the Americas] and the speech given at UASD, in order to silence him, stifle his dissent, restrain his political participation and as a reprisal for the information he circulated.

168 The IACHR understands that a crime of this nature and the impunity that protected it created a curbing effect on the free circulation of ideas and opinions in Dominican society. In the opinion of the IACHR, the forced disappearance of a well-known critic of the political authorities inspired fear in those who also wished to express their opposition to the government and prevented Dominican society from receiving information and opinions freely.

more 1% OAS Unit for Promotion of Democracy. *Electoral Observation Mission in the Dominican Republic 1994-1996* pp. 42 and 50. Communication of the petitioners of November 10, 2005. Annex 1.

¹⁴⁶ Conclusions of the Board of Inquiry in: Report of the Mixed Board, August 1998, p. 14.

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Accordingly, it would be fair to say that Dominican society's right to freedom of expression was impaired by the fact that the disappearance of Narciso González Medina quelled any vigorous and uninhibited critical debate about the government and the recent election

169 For these reasons, the IACHR requests the Court to conclude and declare that the Dominican State has violated the right to freedom of expression enshrined in Article 13(1) of the American Convention in conjunction with Article 1(1) of said-instrument, to the detriment of Narciso González Medina

2 With respect to the relatives of Narciso González Medina

170. The right of access to information is a specific manifestation of the freedom of expression protected by Article 13 of the American Convention. It is a manifestation of this freedom that is particularly important for the consolidation, functioning and preservation of democratic systems of government. The Inter-American Court has determined, by expressly stipulating the right to "seek" and "receive" "information," that Article 13 of the American Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in said treaty.¹⁴⁷

171 In this connection, Principle 3 of the Declaration of Principles on Freedom of Expression of the IACHR provides that "[e]very person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it"; while Principle 4 states that "[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right."

172. Thus, Article 13 of the American Convention includes a positive obligation for the State to provide its citizens with access to the information in its possession, and the corresponding right of individuals to access the information held by the State.¹⁴⁸ According to Article 13 of the American Convention, the State is under the obligation to respond substantially to requests for information within a reasonable period of time, determining whether there is a right to access and, if so, providing the information requested.¹⁴⁹ On this point, the Inter-American Court has also held that the law must guarantee broad and effective access to public information, and that any exceptions may not confer an excessive degree of discretion upon the public officials who decide whether or not to disclose the information, that is to say, exceptions "must have been established by law to ensure that they are not at the discretion of public authorities."¹⁵⁰ The corollary of the right of access to public information is the duty to preserve it.

173 In particular, states have the obligation to ensure to individuals the right of access to information on gross human rights violations. In such cases the delivery of information to an individual can permit it to circulate in society, so that it can become widely known and appraised.¹⁵¹ The IACHR understands that the obligation of the State to provide information in this respect also entails the duty to collect essential information in the course of public

¹⁴⁷ I/A Court H.R., *Case of Claude-Reyes et al*, Judgment of September 19, 2006, Series C No. 151, pars. 76 and 78; I/A Court H.R., *Case of López Álvarez*, Judgment of February 1, 2006, Series C No. 141, par. 163; I/A Court H.R., *Case of Ricardo Canese*, Judgment of August 31, 2004, Series C No. 111, par. 77; I/A Court H.R., *Case of Herrera Ullón*, Judgment of July 2, 2004, Series C No. 107, par. 108.

¹⁴⁸ I/A Court H.R., *Case of Claude-Reyes et al*, Judgment of September 19, 2006, Series C No. 151, par. 77.

¹⁴⁹ I/A Court H.R., *Case of Claude-Reyes et al*, Judgment of September 19, 2006, Series C No. 151, par. 77.

¹⁵⁰ I/A Court H.R., *Case of Claude-Reyes et al*, Judgment of September 19, 2006, Series C No. 151, par. 89.

¹⁵¹ I/A Court H.R., *Case of Claude-Reyes et al*, Judgment of September 19, 2006, Series C No. 151, par. 77.

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administration, preserve it, systematize it, and create a system of archives and records that make it possible, *inter alia*, to fulfill the right to justice or know the past.¹⁵²

174. As Principle 3 of the Principles for the protection and promotion of human rights through action to combat impunity provides, the State has a duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures are aimed to ensure the rights of victims of human rights violations and at preserving the collective memory from extinction.¹⁵³ Accordingly, it is considered that the measures should be taken to preserve any documents that record human rights violations should include those designed to prevent their removal, destruction, or concealment.¹⁵⁴

175. The preservation of archives and their adequate safeguarding and management are precisely necessary elements to ensure the next-of-kin's right to know through access to the information. States also have the duty to collect, archive, safeguard and manage information that may help to prevent or repair human rights violations originating sources that include: a) national governmental agencies, particularly those that played significant roles in relation to human rights violations; b) local agencies, such as police stations, that might have involved in human rights violations; c) State agencies, including the offices of the Attorney or Prosecutor General and the judiciary, that are involved in the protection of human rights; and d) materials collected by truth commissions or other investigative bodies.¹⁵⁵

176. The duty to preserve archives on police arrests is essential for due observance of the right of access to the information for detainees and their next-of-kin. Indeed, it is essential for the State to keep records on all persons detained, with complete data on the person deprived of liberty, the circumstances as to the time, mode, and place of the arrest, and other legal formalities. This information must be recorded, safeguarded, and not manipulated, since it is a mechanism of exceptional importance for administrative control in matters as delicate as the deprivation of liberty of persons and possible subsequent violations of their human rights. The alteration or destruction of information of this type is usually accompanied by silence from the State on the fate of the person detained by its agents, which, in addition, creates a fertile breeding ground for impunity and the propagation of the most heinous crimes.

177. In the instant case, the IACHR will argue that the State violated the right of Narciso González Medina's family to access information connected with the victim's arrest and ensuing forced disappearance. It also will allege that the State breached its obligation to collect and preserve any official information that might have enabled progress in the investigation of the instant case.

¹⁵² IACHR, Annual Report 2008, Volume II, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III, Inter-American Legal Framework of the Right to Freedom of Expression, para. 162-165. Available at: <http://www.cidh.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>

¹⁵³ UN, Principle 3, The Duty to Preserve Memory, and Principle 4, The victims' right to know, Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), adopted on 8 February 2005 by the Commission on Human Rights. See also, OEA, AG/RES. 2267 (XXXVII-O/07), Right to the Truth, Adopted at the fourth plenary session held on June 5, 2007. The member states acknowledged "that the right to the truth may be characterized differently in some legal systems as the right to know or the right to be informed or as freedom of information."

¹⁵⁴ UN, Principle 14, Measures for the Preservation of Archives, Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), adopted on 8 February 2005 by the Commission on Human Rights.

¹⁵⁵ UN, Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), adopted on 8 February 2005 by the Commission on Human Rights.

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178 The IACHR finds that when Narciso González Medina was arrested by state agents and driven to different government facilities, the State should have recorded the information relating to his detention, the time of entry and departure from each place, and the authority into whose custody he was delivered

179 In the instant case, the State has been unable to disprove the validity of the testimony that the J-2 service rosters corresponding to May 25, 26 and 27, 1994, were altered. In his testimony given in January 1998 to the Office of the Government Prosecutor for the National District, the since-retired army captain Antonio Quezada Pichardo said that the rosters that were shown to him for those dates "were not logical" and "did not correspond to fact." According to his testimony, "[the names of the] three [operations] officers [who were on duty on those days] should [have] appear[ed] on those documents, [but] those officers [were] not on the roster." On the contrary, he said that the fact that a corporal appeared at the head of the roster "suggest[ed] that something untoward [was happening], that there [was] something unusual." In the opinion of the witness, "the only reason that [] [he could think of] why th[e original] rosters should have disappeared [...], if they were there, was to get rid of evidence." ¹⁵⁶

180 On the other hand, Antonio Quezada Pichardo also mentioned an "incineration of documents in the J-2 courtyard" during the change of leadership at the Office of the Secretary of State for the Armed Forces (J-2) in which "Colonel Estévez and General Constantino" allegedly took part. In his testimony, Antonio Quezada Pichardo said that he was "much surprised" by the incineration because "normally that was the place where drugs were burned [and] all of the officers would take part." According to the witness, the fact that the outgoing secretary should have burnt papers "made it stand out, a very strange touch." ¹⁵⁷

181 In testimony given on June 15, 1998 to the Mixed Board, then-Major Damián Enrique Arias Matos said that "[he] received instructions to deliver a paper shredder normally used to destroy checks and counterfeit banknotes. On this occasion it was used to shred some duty rosters that [had] been removed from the archive and though [he] did not see the names [he] distinctly recall[ed] that they were dated May 26, 1994." He added that the destruction of the documents was unusual because it was done in the National Police Forensics Unit, "a restricted area normally only entered by the unit head, the Department Commander, the Chief of the National Police, and personnel assigned to work there." ¹⁵⁸

182 There were also irregularities in the log books which allegedly contained information about the detention of Narciso González Medina at the A-2 facility of the Dominican Air Force known as "El Mercadito." In testimony given on January 10, 1997, to the Seventh Examining Court in and for the National District, then-Brigadier General Leonardo Reyes

¹⁵⁶ Annex 13. Statement of Antonio Quezada Pichardo to the State Secretariat of the Armed Forces, January 1998. In the same testimony, Antonio Quezada Pichardo maintained that "you could deduce" that the officers not appearing on the rosters "had to have participated in the operation having to do with the disappearance" of Narciso González Medina. He added that the officer in charge of operations that day was then Major Andrés Lazala Delfín.

¹⁵⁷ The officers in question are Francisco Estévez Martínez—then the outgoing secretary—and Constantino Matos Villanueva. In the words of the witness, the incinerated documents "weren't prayer sheets." However, the employees deny having destroyed documents relating to the disappearance of the alleged victim. Annex 13. Statement of Antonio Quezada Pichardo to the State Secretariat of the Armed Forces, January 1998.

It should be noted that, in a statement before the Seventh Examining Magistrate's Court of the National District on March 23, 1993, Francisco Estévez Ramírez testified that "as the director of J-2 [] I was not in the habit of burning papers. It is my understanding that when these documents got too old to be worth keeping, S-4, which is in charge of property such as files, papers and the like, goes ahead and gets rid of them. At J-2 I remember a quantity of papers from the whole facility being burnt because they were no longer worth keeping. J-2 has a duty roster and log. I did not know that the duty roster and the log for May 1994 had disappeared." Annex 14. Statement of Francisco Estévez Ramírez, March 23, 1999.

¹⁵⁸ Annex 13. Statement of Damián Enrique Arias Matos to the State Secretariat of the Armed Forces, June 15, 1998. He later confirmed this testimony before the Seventh Examining Magistrate's Court of the National District. Annex 14. Statement of Damián Enrique Arias Matos, September 10, 1998.

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Bencosme said that 'no record [was] kept of surveillance or monitoring of a person's activities, known as "special duties," [rather] briefing notes [were] prepared for the Chief of the [Dominican Air Force], who destroy[ed] them as soon as he ha[d] read them and that, if he deem[ed] it necessary, he brief[ed] the Secretary of State for the Armed Forces or the President of the Republic.' He also said that he knew nothing about the irregularities 'in the incident book on the day when Narciso González was allegedly under arrest' at the A-2 facility, but that he "understood that a duty roster went missing at around that time" and that he "s[aw] no use in keeping incident books or duty rosters."¹⁵⁹

183. As noted, the next-of-kin have the right to access information on the circumstances in which violations of the human rights of their loved ones were committed and, in the event of their death or disappearance, to know the victim's fate. This right entails the duty for the State to collect, archive in an orderly or systematic way, preserve, and manage the information contained in its files, which might be needed in order to observe or ensure those rights.

184. The IACHR considers that the aforementioned testimonies are proof sufficient to conclude that files connected with the arrest and custody of Narciso González Medina at State facilities were altered or destroyed by agents of the Dominican State.

185. In light of the foregoing, the IACHR considers that as a result of the destruction of files that contained records of persons detained in those places, to which, according to the above-mentioned testimonies, Narciso González Medina was taken, the family members were unable to access precise information about what happened to the alleged victim. Furthermore, the destruction of the files and the resulting violation of the right of access to information made it especially difficult to investigate and identify those responsible for the disappearance of Narciso González Medina. For the reasons mentioned, the disappearance of the files prevented the right of Narciso González Medina's next-of-kin to justice and reparation from being fulfilled.

186. For the foregoing reasons, the IACHR requests the Court to conclude and declare that the State has infringed the right of Luz Altagracia Ramírez, Ernesto González Ramírez, Rhina Yocasta González Ramírez, Jennie Rossana González Ramírez and Amaury González Ramírez to access to information relating to the forced disappearance of Narciso González Medina in violation of the obligations imposed under Article 13(1) of the American Conventions in conjunction with Article 1(1) thereof.

E. Right of the relatives of Narciso González Medina to personal integrity (Articles 5 and 1.1 of the American Convention)

187. As the Inter-American Court has indicated time and again, the next-of-kin of victims of human rights violations may, in turn, become victims.¹⁶⁰ In a number of cases, the Inter-American Court has considered that the mental and moral integrity of the victims' next-of-kin has been violated "in light of the additional suffering experienced as a result of the specific circumstances surrounding the violations committed against their loved ones and of the subsequent acts or omissions by State authorities with respect to the incidents at issue."¹⁶¹

¹⁵⁹ Annex 14. Statement of Leonardo Reyes Bencosme. January 10, 1997; Annex 13. Statement of Leonardo Reyes Bencosme to the State Secretariat of the Armed Forces. June 2, 1998.

¹⁶⁰ I/A Court H.R., *Case of Golburú et al. Supra*, note 116, par. 96; I/A Court H.R., *Case of Ximenes López*, Judgment of July 4, 2006, Series C No. 149, par. 156; and I/A Court H.R., *Case of López Álvarez*, Judgment of February 1, 2006, Series C No. 141, par. 119.

¹⁶¹ I/A Court H.R., *Case of Gómez Palomino*, *Supra*, note 121, par. 60; I/A Court H.R., *Case of the "Mapiripán Massacre"*, Judgment of September 15, 2005, Series C No. 134, pars. 144 and 146.

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188 Specifically, in cases of forced disappearance of persons, the Inter-American Court has held that it can be understood that the violation of the right to mental and moral integrity of the victims' next-of-kin is a direct result of this phenomenon, which causes them severe anguish that is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.¹⁶²

189 In relation to the suffering of the next-of-kin, the UN Working Group on Enforced or Involuntary Disappearances has held that:

A disappearance is a doubly paralyzing form of suffering: for the victims, frequently tortured and in constant fear for their lives, and for their family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair wondering and waiting, sometimes for years, for news that may never come []

The family and friends of disappeared persons experience slow mental torture, not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health. Aware, furthermore, that they too are threatened; that they may suffer the same fate themselves, and that to search for the truth may expose them to even greater danger.

The family's distress is frequently compounded by the material consequences resulting from the disappearance. The missing person is often the mainstay of the family's finances. He or she may be the only member of the family able to cultivate the crops or run the family business.

The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search. Furthermore, they do not know when -- if ever -- their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to receive pensions or other means of support in the absence of a certificate of death. Economic and social marginalization are frequently the result.¹⁶³

190 In this case, in addition to the presumed impairment of the psychological and moral integrity of the next-of-kin in cases of forced disappearance, the IACHR has also taken as proven several facts which, in its opinion, are evidence of the degree of abridgement of the right to humane treatment of Luz Altagracia Ramírez, the wife of the Narciso González Medina, and Ernesto, Rhina Yocasta, Jennie Rossana, and Amaury González Ramírez, the victim's children.

191 As regards Luz Altagracia Ramírez, it has been proven that on May 27, 1994, she went to the Police Palace and several hospitals owing to the lack of information about her husband's whereabouts. It has also been shown that on May 28, 1994, Luz Altagracia Ramírez went to the offices of the National Police to report the victim's disappearance and that on May 30, 1994, she presented herself at J-2 after receiving information that Narciso González Medina was being detained there. It has also been established that Ernesto, Rhina Yocasta, Jennie Rossana, and Amaury González Ramírez, the children of the victim, pursued a number of procedures and inquiries in order to locate their father. On none of these occasions did they receive information in that regard.

192 Coupled with the foregoing, and as described in the section on the rights to a fair trial and judicial protection, the efforts of the State to investigate what happened were not only ineffective but carried out in such a way that they facilitated concealment of the truth, with a patent lack of diligence and pursuing lines of inquiry that were not only irrelevant but intruded on Narciso González's personal and family life.

¹⁶² I/A Court H.R., *Case of La Cantuta*, *Supra*, note 124, par. 132; I/A Court H.R., *Case of Golburú et al.*, *Supra*, note 116, par. 97; I/A Court H.R., *Case of Gómez Palomino*, *Supra*, note 121, par. 61.

¹⁶³ United Nations, Human Rights, *Enforced or Involuntary Disappearances*, Fact Sheet No. 6 Rev. 2, Geneva, 1997, pp. 1 and 2.

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193 Faced with this situation, on June 12, 1995, Luz Altagracia Ramírez, Ernesto González Ramírez, Rhina Yocasta González Ramírez, Jennie Rossana González Ramírez, and Amaury González Ramírez filed a criminal complaint with a claim for civil damages seeking the investigation, prosecution, and punishment of those responsible for what had happened. More than 14 years have passed since that action was brought and the circumstances of Narciso González Medina's disappearance have still not been clarified, or those responsible punished. More serious still, in the domestic proceeding the family have been made to bear the burden of proof of the victim's forced disappearance and pursue the search for his remains based on rumors about their possible whereabouts.

194 Furthermore, the lack of will on the part of the judicial apparatus to investigate these facts became clear when the case was set aside following the judgment of the Court of Appeals of Santo Domingo of December 18, 2002, and from the lack of response from the State to the reiterated criminal complaint lodged by the family on May 26, 2004. And although the case was reopened on May 2, 2007, the Dominican authorities have still not determined the circumstances of the victim's forced disappearance or punished those responsible for it.

195 In sum, as of this writing, the next-of-kin of Narciso González Medina remain in a state of uncertainty about what happened and the incident remains in impunity, making the distress of losing their loved one even more acute. As to Amaury González Ramírez, he met his death in a traffic accident in 2005 without ever finding out what happened to his father, the identities of those responsible, and the whereabouts of his remains.

196 For the foregoing reasons, the IACHR requests the Court to conclude and declare that the Dominican State has infringed the rights to mental integrity and moral integrity protected under Article 5(1) of the American Convention in conjunction with Article 1(1) thereof, to the detriment of Luz Altagracia Ramírez and Ernesto, Rhina Yocasta, Jennie Rossana and Amaury González Ramírez.

F. Rights to a fair trial and judicial protection (Articles 8(1), 25(1) and 1(1) of the American Convention)

197 Article 8(1) of the American Convention provides:

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

198 Article 25(1) of the American Convention states:

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

199 The Inter-American Court has held that "as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law."¹⁵⁴

¹⁵⁴ I/A Court H.R., *Case of Cantoral-Huamán and García-Santa Cruz*, Judgment of July 10, 2007, Series C No. 167, par. 124; I/A Court H.R., *Case of the Rochela Massacre*, Judgment of May 11, 2007, Series C No. 163, par. 145; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*, *Supra*, note 127, par. 381; and I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*, Judgment of November 24, 2005, Series C No. 158, par. 106.

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200 With respect to the rights of the next-of-kin of victims to obtain justice and reparation, this tribunal has found that:

[F]rom Article 8 of the Convention it is evident that the victims of human rights violations, or their next-of-kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.¹⁶⁵

201 The case law of the Inter-American system emphatically states that the next-of-kin of alleged victims of human rights violations have the right to expect, and the States the obligation to carry out, a diligent investigation of what happened, the prosecution of those allegedly responsible for the unlawful acts, and, if applicable, the imposition on them of the pertinent penalties and redress for the losses suffered.¹⁶⁶ In particular, the organs of the system have held that once state authorities are aware of an alleged violation of human rights, especially where it concerns the rights to life, humane treatment, and personal liberty,¹⁶⁷ they should initiate a diligent judicial inquiry, *ab initio* and without delay,¹⁶⁸ which should be carried out within a reasonable time.¹⁶⁹

202 As to the substance of the duty to investigate with due diligence the Inter-American Court has held that the investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.¹⁷⁰ Indeed, the State has the obligation to ensure that everything necessary is done to learn the truth about what happened and for those responsible to be punished,¹⁷¹ involving every State institution.¹⁷² The Court has also found that the authorities should adopt all reasonable measures to preserve the necessary probative material in order to carry out the investigation.¹⁷³

203 The duty to investigate, like the duty to prevent, 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,¹⁷⁴ or as a step taken by

¹⁶⁵ I/A Court H.R., *Case of García-Prieto et al.*, Judgment of November 20, 2007, Series C No. 168, par. 102; I/A Court H.R., *The "Street Children" Case (Villegorán Morales et al.)*, *Supra*, note 135, par. 227; and I/A Court H.R., *Case of the Surrano-Cruz Sisters: Merits, Reparations and Costs*, Judgment of March 1, 2005, Series C No. 120, par. 63.

¹⁶⁶ I/A Court H.R., *Case of García-Prieto et al.*, *Supra*, note 154, par. 103; I/A Court H.R., *Case of Bulacio: Preliminary Objections, Merits, Reparations and Costs*, Judgment of September 18, 2003, Series C No. 100, par. 114, and I/A Court H.R., *Case of the Miguel Castro-Castro Prison*, *Supra*, note 127, par. 382.

¹⁶⁷ I/A Court H.R., *Case of Cantoral-Huamán and García-Santa Cruz*, *Supra*, note 153, par. 100.

¹⁶⁸ I/A Court H.R., *Case of García-Prieto et al.*, *Supra*, note 154, par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, Judgment of July 8, 2004, Series C No. 110, par. 146; I/A Court H.R., *Case of Cantoral-Huamán and García-Santa Cruz*, *Supra*, note 153, par. 130.

¹⁶⁹ I/A Court H.R., *Case of Bulacio*, *Supra*, note 155, par. 114; I/A Court H.R., *Case of the Rochela Massacre*, *Supra*, note 153, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*, *Supra*, note 127, par. 382.

¹⁷⁰ I/A Court H.R., *Case of García-Prieto et al.*, *Supra*, note 154, par. 101.

¹⁷¹ I/A Court H.R., *Case of Bulacio*, *Supra*, note 155, par. 114; I/A Court H.R., *Case of the Rochela Massacre*, *Supra*, note 153, par. 146; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*, *Supra*, note 127, par. 382.

¹⁷² I/A Court H.R., *Case of Cantoral-Huamán and García-Santa Cruz*, *Supra*, note 153, par. 130; I/A Court H.R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, par. 120; and I/A Court H.R., *Case of Huíca Tecse*, Judgment of March 3, 2005, Series C No. 121, par. 66.

¹⁷³ I/A Court H.R., *Case of Zambrano-Vélez et al.*, *Supra*, note 135, par. 122.

¹⁷⁴ I/A Court H.R., *Velásquez Rodríguez Case*, *Supra*, note 118, par. 177; I/A Court H.R., *Case of Cantoral-Huamán and García-Santa Cruz*, *Supra*, note 153, par. 131; and I/A Court H.R., *Case of Zambrano-Vélez et al.*, *Supra*, note 135, par. 120.

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private interests that depends upon the initiative of the victim or his family or upon their offer of proof¹⁷⁵

204 The duty to investigate the cases of forced disappearance necessarily involves carrying out all actions necessary to determine the fate and whereabouts of the disappeared person. In this regard the Inter-American Court has said, only if all the circumstances relating to the violation are clarified, will the State have provided the victim and his next-of-kin with an effective remedy and complied with its general obligation to investigate and punish, allowing the victims' next-of-kin to learn the truth about the whereabouts of the mortal remains and also what happened to the victim¹⁷⁶

205 As regards the guarantee of reasonable time, the Court has determined that three elements should be taken into account to determine the fairness of the time incurred: a) the complexity of the matter, b) the procedural activities carried out by the interested party, and c) the conduct of judicial authorities¹⁷⁷. In its more recent cases, the Court has included a fourth element: the effects that a delay in the proceeding might have on the legal situation of the victim.¹⁷⁸

206 Based on the foregoing, the IACHR will analyze if in the instant case the Dominican State carried out a diligent investigation within a reasonable time and in accordance with fair-trial guarantees into the forced disappearance of the victim as a means to ensure the rights to life, humane treatment, and personal liberty of Narciso González Medina, and to safeguard the rights to the truth, justice, and reparation of his next-of-kin

207. In the instant case the Commission has taken as proven that three investigations were carried out into the disappearance of Narciso González Medina. The first was conducted from June to October 1994 by the so-called "Police Board of Inquiry;" the second, from April to August 1998, by the so-called "Mixed Board", and the third was initiated in 1995 as a result of a criminal complaint filed with the courts by the victim's family

208 In view of the fact that the first two inquiries were both extrajudicial in nature and that they were set up on an *ad-hoc* basis to investigate what happened to the victim, the Commission will first analyze in one section the proceedings of the Police and Mixed Boards, and then, in a second section, the measures adopted by the courts.

1. Police and Joint Committees

209. The Commission will examine the actions of the Boards, bearing in mind, first, their appointment and authority to investigate what happened, second, if their composition offered guarantees of independence and impartiality; and, third, if the way they acted was consistent with the principles of due diligence mentioned in the preceding paragraphs

210 As regards the first aspect, according to the facts that the Commission has deemed proven, these Boards were not the appropriate organs prescribed by law provided for investigating complaints concerning the commission of criminal offences. They were set up in an

¹⁷⁵ I/A Court H.R., *Valásquez Rodríguez Case*, *Supra*, note 118, par. 177; I/A Court H.R., *Case of Zambrano-Vélez et al*, *Supra*, note 135, par. 120

¹⁷⁶ I/A Court H.R., *Case of Ticona-Estrada et al*, *Supra*, note 128, par. 80

¹⁷⁷ I/A Court H.R., *Case of Escobedo-Zapata*, *Merits*, *Reparations and Costs Judgment* of July 4, 2007, Series C No. 165, par. 72; I/A Court H.R., *Case of La Cantuta*, *Judgment* of November 29, 2005, Series C No. 162, par. 102

¹⁷⁸ I/A Court H.R., *Case of Kwas-Fernández v. Honduras*, *Merits*, *Reparations and Costs Judgment* of April 3, 2009, Series C No. 196; I/A Court H.R., *Case of Valle Jaramillo et al v. Colombia*, *Merits*, *Reparations and Costs Judgment* of November 27, 2008, Series C No. 192

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ad hoc manner by the Director of the National Police and the President of the Republic, respectively, with the sole mandate of determining what happened to Narciso González Medina which, in the opinion of the Commission, constitutes a disavowal of the guarantee that human rights violations be investigated by competent authorities under the terms of Article 8(1) of the American Convention.

211 As to the second point, the IACHR has established that the members of the Police Board were police personnel appointed by the Director of National Police, in spite of the fact that one of the places where Narciso González was seen in a poor physical condition after his disappearance was precisely a facility of that institution. As for the Mixed Board, it has been proven that it was composed of members of the Armed Forces, National Police, National Intelligence Directorate, and Office of the Prosecutor General. The Commission has determined that after his disappearance Narciso González was seen in state custody and in a very bad way at facilities of at least three of these four entities.

212 Specifically with regard to the Police Board, the Commission notes that a former member of the Police Board of Inquiry, Luis Manuel Tejeda Fernández, said that "the Board lacked the authority to investigate [several] individuals for one logical reason, which is that all of those mentioned were part of the power structure that was governing at the time [] including the Chief of Police at the time, [so] how, then, do think that case could have been investigated without the members of the Board being harmed?"¹⁷⁰ For its part, one of the conclusions of the report of the Mixed or was that "the Police Board of Inquiry was limited in its scope of action, chiefly due to the impossibility of interrogating certain military officials."¹⁶⁹

213 The Commission finds that the fact that the Police and Mixed Boards were composed of officers from the entities involved in the victim's disappearance flouted the guarantees of independence and impartiality that should prevail in any investigation of human rights violations, in particular, extremely serious ones, such as forced disappearances.

214 On the third point, that is, if the Boards acted with the due diligence required in cases such as this, the Commission notes, to begin with, that neither of them reached any conclusions as to what happened to Narciso González, or identified anyone potentially responsible for the acts, despite strong indications that they involved both police and military officials. Furthermore, the Commission notes that both the Police and the Mixed Board committed serious inconsistencies, irregularities, and omissions that resulted in the loss of evidence connected with the acts.

215 As to the Police Board¹⁶¹, gross errors were committed in fundamental procedures for determining what had happened and identifying those responsible.

216 The first of these was that, in spite of the fact that the number plate was known of the car in which Narciso González Medina was said to have been arrested, an inspection was ordered of a car with a different number plate, owing to a supposed "typing error." Despite being aware of this mistake, the Police Board did not take immediate steps to correct it and arrange for the inspection of the correct car.

¹⁶⁹ Annex 13. Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces; Annex 13. Statement of Rafael Bencosme Candelier to the State Secretariat of the Armed Forces, June 18, 1998; Annex 14. Statement of Rafael Bencosme Candelier, December 5, 1996; Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

¹⁷⁰ Annex 13. Report of the State Secretariat of the Armed Forces/Joint Committee, August 1998.

¹⁶¹ It should be noted that, although the IACHR learned that the Police Committee had a file on the investigation and has requested a copy on several occasions, the Commission has been unable to obtain access to this file. The information on these investigations—essential because it was the first collected—comes primarily from the Joint Committee report and the letters by the Truth Commission.

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217 Another gross error occurred with the summons of an official about whom there was information to the effect that Narciso González had been in his custody. The Police Board summoned to testify another official with the same last name owing to a supposed "oversight." On this point, there is nothing to suggest that this mistake was rectified at any time during this inquiry.

218 In addition, although a wiretap was ordered on the telephones of the family of Narciso González Medina in order to obtain information on his whereabouts, most of the data collected in this way was not evaluated nor were logical and relevant lines of inquiry identified on the basis of that information. On the contrary, relevant information was collected and then dismissed for a variety of reasons, such as that calls came from "public telephones" or were designed to upset the family.

219 The Police Board did not pursue logical lines of inquiry based on the information and testimony in its possession. On the contrary, irrelevant, impertinent, and invasive lines of inquiry were followed to investigate the victim's personal and family life. Thus, for example, it should be mentioned that one of the Police Board's lines of inquiry sought to examine the emotional ties within the González Medina family, providing unnecessary and unreasonable details about the love life of the victim and his wife. In addition, conclusions were reached about the financial situation of Narciso González and that he gambled "regularly."

220 A striking aspect is that the Police Board, in order to justify the lack of results from its endeavors, reached illogical and baseless conclusions, such as, for instance, that Narciso González was possessed of a "preternatural intelligence" which he could use to engineer any situation, including his own disappearance.

221 Finally, despite the fact that the Truth Commission sent a letter which mentioned many of these errors by the Police Board, there was never any response to that communication.

222 As regards the Mixed Board, it was set up in 1998, four years after the Police Board released its report, which, as mentioned, reached no conclusions about what happened to Narciso González Medina.

223 In its report, the Mixed Board merely indicated that because of the time that had passed the relevant evidence had dissipated and that there were serious contradictions in the testimonies collected. However, other than the deposition of witnesses, the Mixed Board took no steps whatever to clarify the alleged inconsistencies, such as confrontation of witnesses or other evidentiary proceedings to corroborate or rule out certain statements. Nor were any proceedings conducted in an attempt to clarify the issue of the official files that had been lost or tampered with.

224 Despite these omissions, the Mixed Board, without further grounds, proceeded to discard the testimony of eyewitnesses to the presence of Narciso González at state facilities.

225 Furthermore, although the Mixed Board identified the faults committed by the Police Board it adopted no measures to amend the investigations and remedy the effects of those irregularities. Finally the report of the Mixed Board was described as provisional by the President of the Republic and yet, 11 years later, a final report has still not been released.

226 For the foregoing reasons, the Commission requests the Court to conclude and declare that the Police and Joint Committees did not constitute effective mechanisms for investigating the disappearance of Narciso González Medina, because they were not competent, independent and impartial bodies and failed to act with due diligence to discover what had happened, identify and possibly punish those responsible and determine the fate or whereabouts of the victim or his mortal remains. The Dominican State has therefore violated the rights enshrined in Articles 8 and 25 of the American Convention in conjunction with Article 1(1) of same, to the detriment of Narciso González Medina, of Luz Altigracia Ramírez and of Ernesto, Rhina Yocasta, Jennie Rossana and Amaury González Ramírez.

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2. Criminal proceedings

227 The judicial investigation into the forced disappearance of Narciso González Medina commenced on June 12, 1995, as a result of a criminal complaint with a claim for civil damages filed by Luz Altagracia Ramírez and her children. The foregoing implies that the judicial authorities did not initiate an investigation *ab initio*, in spite of the fact that the disappearance of Narciso González was public knowledge, given the wide coverage of the case in the press

228 In the opinion of the IACHR, this fact in itself constituted a disregard of the duty of the State to initiate and pursue investigations *ab initio*, as part of the obligation to provide victims of human rights violations and their next-of-kin with effective remedies.

229 This proceeding began in 1995 and concluded with a decision adopted at second instance on August 13, 2002, after which it was set aside. This decision concluded that it was not possible to determine what had happened or single out alleged culprits. Although the State informed the Commission that the investigations had been reopened on May 2, 2007, the information available suggests that, to date, no further procedures have been conducted or concrete results obtained.

230 It is not for the Commission to supplant the domestic authorities in determining what procedures should have been carried out in the investigation in the instant case. However, following, the Commission draws attention to a number of acts and omissions that make it possible to determine if due diligence was observed.

231 The Commission notes that in the decisions handed down in this proceeding the judicial authorities justified the lack of conclusions and failure to identify those responsible on the absence of clear and sufficient evidence and on the contradictions in the testimonies collected. However, similar to what the Commission found with respect to the Police and Mixed Boards of Inquiry, the record shows that the officials in charge of the judicial investigation also failed to take steps to clarify those contradictions and inconsistencies. There were no confrontations of witnesses or other evidentiary proceedings designed to corroborate the truth of different testimonies.

232 Moreover, logical lines of inquiry were not pursued in the proceeding or evidence examined which at first sight would have been able to shed light on the facts in the case and, in particular, resolve several of the inconsistencies and alleged contradictions argued by the judicial authorities at first and second instance. For example, it is worth noting that at no time in the judicial proceeding was former army captain Antonio Quezada Pichardo summonsed, even though he was one of the officers who saw Narciso González Medina arriving at the J-2 military facility on the day he disappeared. Moreover, this person received information on the arrest operation from one of the officials who personally participated in it.

233 It is worth mentioning with respect to the relevance of that testimony that one of the judicial officials who had cognizance of the case concluded that:

[B]ased on an analysis of the documents contained in the record and a review of the questioning of other witnesses conducted by the Examining Court, [it is] consider[ed] unnecessary for them to be questioned before this court on the understanding that they would not furnish any new elements or evidence that might tend to change the situation of the proceeding.¹⁸⁷

¹⁸⁷ Annex 15. Qualification Chamber of Santo Domingo. Decision of December 18, 2002.

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234 Another example is that there was no investigation of the causes of the retraction by the only official who admitted his participation in the operation to arrest Narciso González Medina. The military official, Juan Dionisio Marte, testified to the Mixed Board that he had taken part in the operation and on two occasions identified Narciso González as the detainee from a photograph of him. He also testified that he feared that he would be killed if he told what had happened. This fear was also expressed to former army captain Antonio Quezada Pichardo, mentioned in the preceding paragraph as one of the key witnesses who was not summoned. In spite of signs that Mr. Marte was coerced into retracting his testimony, the judicial authorities proceeded to discard it and validate said retraction, without investigating the fear expressed by said official.

235 In addition, despite strong indications that the disappearance of Narciso González was prompted by his criticisms and public accusations against the government of the day, nor was there an investigation into the visit of former President Joaquín Balaguer and the proposals which he apparently made to the family to hire foreign investigators as it was a "difficult crime to solve."

236 It is also worth mentioning that there was no investigation of the loss or alteration of official documents at state facilities where Narciso González Medina was seen after his disappearance. No forensic or expert examination was made of the documents to determine if they were false or had been tampered with.

237 Finally, beyond the attempts to ascertain the identities of those responsible, no specific measures were adopted to establish the fate or whereabouts of Narciso González or his remains, in spite of the fact that information was received on at least four hypotheses as to what had occurred.

238 As to the guarantee of reasonableness of time, bearing in mind the principles mentioned above, the Commission notes that from the moment that the State became aware of the events, on May 26, 1994, at the latest,¹⁰³ until the date of this writing, 15 years have passed and the investigations have not concluded.

239 In that time there have been periods of inactivity that the State has been unable to justify. For example, a judgment at first instance was only returned six years after the investigation was opened, in spite of the fact that the bulk of the evidence collected by the authorities consisted of witness testimony. In some cases there were delays of over a year between the taking of one testimony and the next, for which the State has not offered suitable explanations.

240 Furthermore, between the decision at second instance issued in 2002 and the date of the order to reopen the investigation, five years passed without any procedure conducted on the disappearance of Narciso González. Between 2007 and the date of adoption of the instant report two more years have elapsed without any information about measures adopted in that interval, while the available documents suggest that there have been no concrete results nor has anyone suspected of carrying out or planning the crime been identified. In the Commission's opinion these delays have been caused by lack of diligence on the part of the authorities in charge and not by the behavior of the next of kin, who have done as much as they can to contribute to the determination of the truth. In cases such as this delays inevitably cause a substantial reduction in the prospects of finding accurate testimony and evidence for establishing what happened and punishing those responsible.

241 For the foregoing reasons, the Commission requests the Court to conclude and declare that the judicial process was also not an effective mechanism for investigating the forced

¹⁰³ From the disappearance report filed by Luz Altamiranda Ramírez.

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disappearance of Narciso González Medina, because this process was not initiated or pursued either within a reasonable time or with due diligence, the result of which has been to perpetuate concealment of the acts and impunity for them. The Dominican State has therefore violated the rights protected under Articles 8(1) and 25(1) of the American Convention in conjunction with Article 1(1) of same to the detriment of Narciso González Medina, of Luz Altigracia Ramírez and of Ernesto, Rhina Yocasta, Jennie Rossana and Amaury González Ramírez.

VI. REPARATIONS AND COSTS

242. By virtue of the facts alleged in this application and of the consistent jurisprudence of the Inter-American Court, which establishes "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 make adequate reparation for that harm",¹⁰⁴ the Commission hereby submits to the Court its views with regard to the reparations and costs owed by the Dominican Republic because of its responsibility for the human rights violations committed against the victims.

243. In light of the Court's Rules of Procedure, which allow the individual to represent his or her position independently, the Commission will merely present the general criteria and claims for reparations and costs that it believes the Court should apply in the instant case. The Commission considers it the province of the victims and their representatives to provide further details in support of their claims under Article 63 of the American Convention and Article 25 and other articles of the Court's Rules of Procedure. However, should the victims' representative not avail themselves of this right, the Inter-American Commission requests the Court to allow it an opportunity to quantify the relevant claims during the course of the proceedings. Furthermore, the Commission will duly inform the Court if it has any observations concerning the victims' representatives' quantification of the claims.

1. Obligation of reparation

244. In the instant case, the Inter-American Commission has respectfully requested the Court to conclude and declare that the Dominican State has incurred international responsibility for violation of the rights to recognition as a person before the law, life, humane treatment, personal liberty, freedom of expression, a fair trial and judicial protection established in Articles 3, 4, 5, 7, 13, 8 and 25 of the American Convention in conjunction with the general obligations of respect and protection enshrined in Article 1(1) of same.

245. Article 63(1) of the American Convention establishes that

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.

246. As the Court has stated in its consistent jurisprudence, "Article 63(1) of the American Convention embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act attributable to a State takes place, the State's international responsibility for violation of the international norm arises immediately, with the consequent duty to make reparation and to arrest the consequences of the violation."¹⁰⁵

¹⁰⁴ I/A Court H.R., *Conloral Hugmani and García Santacruz Case*, Judgment of July 10, 2007, Series C No. 167, para. 156; I/A Court H.R., *Case of Zambrano Vélez et al.*, Judgment of July 4, 2007, Series C No. 166, para. 103; and I/A Court H.R., *Escufo Zapata Case*, Judgment of July 4, 2007, Series C No. 165, para. 120.

¹⁰⁵ I/A Court H.R., *Case of "La Cantuta"*, Judgment of November 29, 2006, Series C No. 162, para. 200; I/A Court H.R., *Case of Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 414; I/A

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247 All aspects of the obligation of reparation are regulated by international law (scope, nature, forms and determination of beneficiaries) The obligated State may not change or ignore it by invoking national law ¹⁸⁵.

2. Beneficiaries

248 Article 63(1) of the American Convention requires remediation of the consequences of a violation and payment of fair compensation. In view of the nature of the instant case, the beneficiaries of any reparations ordered by the Court will be Ernesto, Rhina Yocasta, Jennie Rossana and Amaury González Ramírez and Luz Alta gracia Ramírez.

3. Reparation measures in the instant case

249 Reparations are crucial to ensure that justice is done in an individual case. They also raise the Court's decision above the sphere of moral condemnation. Whenever possible, reparation for harm caused by the infringement of an international obligation requires full restitution (*restitutio in integrum*), i.e. reestablishment of the situation prevailing prior to the violation. When this is not possible, reparations consist of measures tending to erase the marks of the violations. ¹⁸⁷ These measures include the various ways in which a State may confront the international responsibility that it has incurred and, under international law, consist of the measures of restitution, compensation, rehabilitation, satisfaction and nonrepelition ¹⁸⁸.

250 Owing to the nature of the instant case, the Commission requests the Court to order the Dominican State to carry out an impartial, diligent and effective investigation of the fate or whereabouts of Narciso González Medina or his mortal remains and of the circumstances surrounding his forced disappearance, in order to identify those responsible and impose the corresponding penalties.

251. The Commission further requests the Court to order the Dominican State to investigate and impose legal consequences for acts or omissions by employees of the State that contributed to the concealment of the acts in the case, denial of justice and impunity.

252 In addition to ordering the State to investigate and impose the legal consequences for concealment by means of removal, destruction, manipulation or loss of documents, The Commission requests that the Court order it to make all necessary efforts to recover the official records of possible relevance to elucidating the forced disappearance of Narciso González Medina. In addition to having these records available to the competent authorities for investigation purposes, no legal or other barrier to access should stand in the way of Narciso González's family or their representatives.

Court H.R. *Case of Montero Aranguren et al. (Detention Center of Cofa)*. Judgment of July 5, 2006, Series C No. 150 para. 116.

¹⁸⁶ I/A Court H.R., *Canloral Humanti and García Santacruz Case*. Judgment of July 10, 2007, Series C No. 167, para. 190; I/A Court H.R., *Case of Zambrano Vélez et al.* Judgment of July 4, 2007, Series C No. 166, para. 148; I/A Court H.R., *Case of "La Cantuta," Judgment on Merits, Reparations and Costs*. Judgment of November 20, 2006, Series C No. 162, para. 200; I/A Court H.R., *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006, Series C No. 160, para. 415.

¹⁸⁷ I/A Court of H.R., *Case of Gómez Paquiyauri Brothers*, para. 190; *Case of the 19 Tradersmen*, para. 223; *Myrna Mack Chang Case*, para. 237; *Condos Case*, para. 108, and *Coronado Case, Reparations* (Art. 63(1) American Convention on Human Rights) Judgment of August 29, 2002, Series C No. 95 para. 78.

¹⁸⁸ Cf. United Nations, *Study concerning the Compensation and Rehabilitation for Victims of Gross Violations of Human Rights, Final Report, submitted by Theo van Boven, Special Rapporteur*, E/CN.4/Sub.2/1990/10, July 26, 1990, Cf. also 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, para. 31; *Suárez Rosero Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, para. 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 No. 43.

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253 The Commission also requests the Court to order other measures of compensation, satisfaction, rehabilitation and nonrepetition, as outlined below

254 The Court has established essential criteria for ensuring fair compensation that provides sufficient and effective financial compensation for the harm caused by human rights violations. The Court has also established that compensation is by nature merely compensatory and that it must be granted in sufficient breadth and measure to repair both material and immaterial harm.¹⁸⁹

255 In its reparations jurisprudence, the Court has consistently established that material harm includes indirect or consequential damages and *lucrum cesans*, as well as immaterial or moral harm to the victims and, in certain cases, their family nucleus.¹⁹⁰

256 Regarding immaterial harm, the Court has established:

Immaterial harm may include the suffering and affliction caused to the direct victim and the direct victim's next of kin, impairment of values of great significance to these persons, and nonpecuniary changes in the living conditions of the victim or the victim's family. Since immaterial harm cannot be assigned a precise monetary value, for the purpose of full reparation to the victims, only compensation is possible, and in two forms. The first is by payment of an amount of money or provision of monetarily quantifiable goods or services determined by the Court in the reasonable exercise of its judicial discretion. The second is through acts or works of public scope or impact, the effects of which may be, for example, to preserve the victims' historical memory, to recognize the victims' dignity, to console the victim's relatives or to send a message of official reprobation of the human rights violations in question and commitment to efforts to avoid their repetition.¹⁹¹

257 Without prejudice to any claims to be submitted by the victims' representatives at the appropriate point in the proceeding, the IACHR requests to the Court to establish equitable compensation for the material and immaterial harm arising as a consequence of the violations alleged in this application on the basis of such evidence as may be placed before it.

258 The Commission further requests the Court to order the State to take measures of satisfaction including but not limited to acknowledgement of international responsibility, publication of the relevant parts of the Court's judgment and preservation of the historical memory of Narciso González Medina.

259 The Commission also requests the Court to provide measures of rehabilitation for the surviving members of Narciso González Medina's family.

260 Lastly, the Commission requests the Court, as a measure of nonrepetition, to order the Dominican State to organize the government system to comply with the requirements of access to information. This implies, *inter alia*, encouraging a culture of transparency and ensuring the efficacy of mechanisms for enforcing the right of access to information. With respect to

¹⁸⁹ I/A Court H.R., *Case of "La Cantuta," Judgment on Merits, Reparations and Costs*, Judgment of November 29, 2006, Series C No. 162, para. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, para. 204; I/A Court H.R., *Garrido and Baigorria Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, para. 41.

¹⁹⁰ I/A Court H.R., *Case of "La Cantuta," Judgment on Merits, Reparations and Costs*, Judgment of November 29, 2006, Series C No. 162, paras. 213 and 214; I/A Court H.R., *Case of Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 423.

¹⁹¹ I/A Court H.R., *Case of "La Cantuta," Judgment on Merits, Reparations and Costs*, Judgment of November 29, 2006, Series C No. 162, para. 216; I/A Court H.R., *Case of Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 430; I/A Court H.R., *Case of Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, para. 383; I/A Court H.R., *Case of Pueblo Bello Massacre*, Judgment of January 31, 2006, Series C No. 140, para. 254.

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deprivations of liberty, the right of access to information gives rise to an obligation to create, keep, safeguard and refrain from manipulating archives or records of detentions by police, military, intelligence or other security forces that contain information on the time, mode and place of detention as well as other legal requirements. The family members of detained persons must have access to this information at all times.

4. Costs and expenses

261 In accordance with the Court's consistent jurisprudence, the concept of reparation enshrined in Article 63(1) of the American Convention is understood to include costs and expenses, since the efforts of the victim, the victim's successors, or the victim's representatives to access international justice imply expenditures and financial commitments that must be compensated¹⁹²

262. In the instant case, the Commission requests the Court, after hearing the victim's representatives, to order the Dominican State to pay any past, present or future costs and expenses incurred to bring this case before national courts and the inter-American human rights system

VII. PETITION

263. On the basis of the foregoing arguments of fact and of law, the Inter-American Commission on Human Rights requests that the Court conclude and declare that

- (a) The Dominican Republic is responsible for violation of the rights to recognition of juridical personality, life, humane treatment, personal liberty, freedom of expression, a fair trial and judicial protection established in Articles 3, 4, 5, 7, 13, 8 and 25 of the American Convention, in conjunction with the obligations enshrined in Article 1(1) thereof, to the detriment of Narciso González Medina;
- (b) The Dominican Republic is responsible for violation of the rights to humane treatment, access to information, a fair trial and judicial protection established in Articles 5, 13, 8 and 25 of the American Convention, in conjunction with the obligations enshrined in Article 1(1) thereof, to the detriment of the children of Narciso González Medina, i.e., Ernesto, Rhina Yocasta, Jennie Rossaria and Amaury González Ramírez, and of his wife, Luz Altagracia Ramírez

264 and, therefore, that it order the State:

- (a) To seek the fate or whereabouts of Narciso González Medina or his mortal remains by all available means;
- (b) To carry out a full, impartial and effective investigation to elucidate the forced disappearance of Narciso González Medina, identify the perpetrators and impose the appropriate penalties;
- (c) To provide for appropriate administrative, disciplinary or penal measures to prevent the repetition of events such as those alleged in this application in which employees of the State contributed, by act or omission, to concealment, denial of justice and impunity, failed in their duty to respond to the situation denounced or were involved in measures to hinder procedures intended to identify and punish the perpetrators;

¹⁹² I/A Court H.R., *Case of "La Cantuta," Judgment on Merits, Reparations and Costs*, Judgment of November 29, 2006, Series C No. 162, para. 243; I/A Court H.R., *Case of Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 455; I/A Court H.R., *Case of Dismissed Congressional Employees (Aguado Alfaro et al.)*, Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C No. 158, para. 152.

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- (d) To make the necessary efforts to recover official documents and/or records relating to the case that have been lost or removed; specifically, the Commission requests the Court to order the State not to deny the victim's family members access to this information;
- (e) To organize the government apparatus to protect the right of access to information by creating, keeping, safeguarding, and refraining from manipulating official records and documents;
- (f) To take steps to preserve the historical memory of Narciso González Medina;
- (g) To adopt measures to rehabilitate the family of Narciso González Medina;
- (h) To compensate the family of Narciso González Medina for material and nonmaterial harm; and
- (i) To pay the costs and legal expenses incurred to bring the instant case before the Inter-American Commission and Inter-American Court

VIII. SUPPORTING EVIDENCE

1. Documentary evidence

265 The following documentary evidence is currently available:

- Appendix 1. IACHR, Report 16/98 (admissibility), Case 11,324, *Narciso González Medina*, Dominican Republic, March 3, 1998
- Appendix 2. IACHR, Report 111/09 (merits), Case 11,324, *Narciso González Medina*, Dominican Republic, November 10, 2009
- Appendix 3. Inter-American Commission on Human Rights case file
- Annex 1. IACHR, Report on the Situation of Human Rights in the Dominican Republic (1999), para 152. Available at <http://www.cidh.oas.org/countryrep/Rep.Dominicana99sp/indice.htm>
- Annex 2. IACHR, Record of Public Hearing No. 11, October 6, 1997, held during the 97th Regular Period of Sessions.
- Annex 3. Unit for the Promotion of Democracy, Organization of American States (OAS). Electoral observations in the Dominican Republic, 1994-1996.
- Annex 4. *La Muralla* magazine. Biographical information on Dr. Narciso González.
- Annex 5. Report of Dr. Santiago Valenzuela Sosa on Narciso González Medina's health as of June 22, 1994.
- Annex 6. *La Muralla* magazine, "10 pruebas que demuestran que Balaguer es lo más perverso que ha surgido en América" [10 proofs that none more evil than Balaguer has emerged in America]
- Annex 7. Speech by Narciso González Medina, May 25, 1994
- Annex 8. Autopsy report of the State Secretariat of Public Health and Social Welfare, dated December 2, 1996

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- Annex 9.** Criminal complaint filed with the Seventh Examining Magistrate's Court of the National District, May 26, 1995
- Annex 10.** Deposit of addendum to criminal complaint with civil party application.
- Annex 11.** Grant of power of attorney in rem with civil party application, May 26, 1995.
- Annex 12.** Letter from the Truth Commission to the Chief of the National Police, February 22, 2005
- Annex 13.** Report of the Joint Commission of the State Secretariat of the Armed Forces, August 1998

This annex contains the following:

- Statement of Luz Altagracia Ramírez to the State Secretariat of the Armed Forces. June 6, 1998.
- Statement of Virgilio Félix Almánzar Estrella, Truth Commission member. to the State Secretariat of the Armed Forces
- Statement of Leonardo Reyes Bencosme to the State Secretariat of the Armed Forces. June 2, 1998
- Statement of Rafael Oscar Bencosme Candelier to the State Secretariat of the Armed Forces. June 18, 1998
- Statement of Tomás B. Castro Montenegro to the State Secretariat of the Armed Forces
- Statement of Tomás B. Castro Montenegro to the State Secretariat of the Armed Forces, May 29, 1998
- Statement of Juan Dionisio Marte to the State Secretariat of the Armed Forces, May 15, 1998
- Statement of Antonio Quezada Pichardo before the Office of the Public Prosecutor for the National District, March 12, 1998
- Statement of Antonio Quezada Pichardo to the State Secretariat of the Armed Forces. January 1998
- Statement of Junior Sarita Lebrón to the State Secretariat of the Armed Forces
- Statement of Paulina Alba to the State Secretariat of the Armed Forces, May 20, 1998
- Statement of Fernando Isidro Olivo Sánchez to the State Secretariat of the Armed Forces
- Undated statement of Carlos Rodolfo Cuevas to the State Secretariat of the Armed Forces
- Statement of Carlos Batista Rivas to the State Secretariat of the Armed Forces, June 27, 1998
- Statement of Manuel Vanegas Rivas to the State Secretariat of the Armed Forces. June 2, 1998
- Statement of José Ramón López Hidalgo to the State Secretariat of the Armed Forces. June 26, 1998
- Statement of Napoleón Guerrero Andrickson to the State Secretariat of the Armed Forces, May 28, 1998
- Statement of Carlos Matos Villanueva to the State Secretariat of the Armed Forces
- Statement of Constantino Matos Villanueva to the State Secretariat of the Armed Forces
- Statement of Andrés E. Lazala Delfín to the State Secretariat of the Armed Forces, May 16, 1998.
- Statement of Francisco Dolores Estévez Ramírez to the State Secretariat of the Armed Forces
- Statement of Rafael Bienvenido Romero Cintrón to the State Secretariat of the Armed Forces

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- Statement of Siano de Jesús Corona Jumelles to the State Secretariat of the Armed Forces, May 15, 1998
- Statement of Rafael Reynoso Jiménez to the State Secretariat of the Armed Forces, May 17, 1998
- Statement of Rafael Eugenio Reyes Castillo to the State Secretariat of the Armed Forces, May 16, 1998
- Statement of José Julián Páez Jiménez to the State Secretariat of the Armed Forces, June 3, 1998
- Statement of de Héctor Nina Rodríguez to the State Secretariat of the Armed Forces, June 23, 1998
- Statement of Rafael Guerrero Peralta to the State Secretariat of the Armed Forces, June 24, 1998
- Statement of Luis Manuel Tejeda Fernández to the State Secretariat of the Armed Forces
- Statement of Nelson Antonio Santos to the State Secretariat of the Armed Forces
- Statement of José Agustín Espiritusanto to the State Secretariat of the Armed Forces
- Statement of Damián Enrique Arias Mayos to the State Secretariat of the Armed Forces, June 15, 1998

Annex 14. Seventh Examining Magistrate's Court of the National District, Decisions 195/2001 and 110/2001, August 24, 2001

This annex contains the following:

- Extract of marriage, December 25, 1969.
- Extract of birth of Ernesto González Ramírez, November 10, 1970.
- Extract of birth of Rhina Yocasta González Ramírez, April 24, 1972.
- Extract of birth of Jennie Rosanna González Ramírez, March 19, 1974.
- Extract of birth of Amaury González Ramírez, September 21, 1978.
- Statement of Luz Altagracia Ramírez Martínez, July 7, 1995
- Statement of Luz Altagracia Ramírez made June 11, 1996
- Statement of Luz Altagracia Ramírez, September 8, 1998
- Statement of Luz Altagracia Ramírez Martínez, February 1, 1999
- Statement of José Martín Suriel Núñez, made prior to September 17, 1998
- Statement of Roberto José Santana Sánchez, August 14, 1998
- Statement of Martha Elena Díaz G. de Acosta, February 16, 1999
- Statement of Manuel Enrique Vanegas Rivas, March 3, 1999
- Statement of Rhina Yocasta González Ramírez, July 10, 1995.
- Statement of Rhina Yocasta González Ramírez
- Statement of Jennie Rosanna González Ramírez, July 14, 1995
- Statement of Junior Sarita Lebrón, August 19, 1998.
- Statement of Paulina Alba, February 19, 1999
- Statement of Carlos Batista Rivas de, November 22, 1996
- Statement of Carlos Batista Rivas, November 11, 1998.
- Statement of Manuel Vanegas Rivas, December 17, 1996
- Statement of José Ramón López Hidalgo, August 13, 1997
- Statement of José Ramón López Hidalgo, August 19, 1997
- Statement of Rosalía Ramírez Martínez.
- Statement of Carlos Matos Villanueva, December 11, 1996
- Statement of Francisco Dolores Estévez Ramírez, March 23, 1999.
- Statement of Constantino Matos Villanueva, December 11, 1996
- Statement of Constantino Matos Villanueva, March 5, 1999
- Statement of Santiago Alcántara Gómez, January 12, 1999
- Statement of José de Jesús Sánchez López, January 12, 1999
- Statement of Rafael Bencosme Candelier, December 5, 1996.
- Statement of Rafael Bencosme Candelier, August 25, 1998

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- Statement of Rafael Bencosme Candeller
- Statement of Julio César Tejeda Durá, September 16, 1998
- Statement of Augusto Estarlin Vargas, December 1, 1998
- Statement of Juan Bautista Rojas Tobar, December 6, 1996
- Statement of Juan Bautista Rojas Tobar, February 11, 1999
- Statement of Domingo Nin Méndez, January 22, 1995
- Statement of Leonardo Reyes Bencosme, January 10, 1997
- Statement of Rafael Guerrero Peralta
- Statement of Rafael Guerrero Peralta, December 10, 1996
- Statement of Manuel Núñez Paulino, December 9, 1996
- Statement of Nelson Antonio Santos, June 5, 2001
- Statement of Luis Manuel Tejeda Fernández, September 10, 1998
- Statement of Luis Manuel Tejeda Fernández, December 3, 1996
- Statement of Rafael Acosta Cuevas, May 13, 1996
- Statement of Juan Dionisio Marte, January 12, 1999

Annex 15. Cámara de Calificación of Santo Domingo, Decision of December 18, 2002

This annex contains the following:

- Statement of Dr. Ignacio Valenzuela, September 20, 2002
- Statement of Paulina Alba, October 30, 2002
- Statement of Carlos Balista Rivas, September 20, 2002
- Statement of Luz Altagracia Ramírez, July 16, 2002

Annex 16. *Curriculum vitae* of Commission expert witness

Annex 17. *Curriculum vitae* of Federico Andreu Guzmán, Commission expert witness

266. Please note that the copies provided in the annexes are those available to the Commission. They are the best that it has been able to obtain as of this time

2. Expert evidence

267. The Commission hereby requests that the Court accept the opinions of the following expert witnesses.

- An expert witness, whose name will be given to the Court shortly, will provide expert testimony on Narciso González Medina's role as a writer, university professor and activist in the context of the Dominican Republic at the time of the acts. The expert will also address the political and social context in which the May 1994 forced disappearance of Narciso González Medina occurred, including the presidential elections and the denunciations of electoral fraud, among other relevant contextual aspects. The Commission considers that, in order to determine the full scope of the State's responsibility for a forced disappearance, it is essential to place it in a specific political and social context and that, consequently, this expert witness declaration is in the Inter-American public interest.

- Federico Andreu Guzmán, who will give expert witness testimony on the applicable international human rights standards in the various circumstances that contributed to impunity for the acts in the instant case. Specifically, the expert witness will discuss investigations carried out by police or military forces reported to have been responsible for a forced disappearance. He will also speak about the requirements of an adequate legal framework to investigate, punish and make reparation for a forced disappearance. In addition, he will address the need to create and adequately maintain official records of deprivations of liberty, as well as their connection with the diligent and


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effective investigation of cases of forced disappearance of persons and the right of access to information. All of these aspects involve the inter-American public interest.

IX. INFORMATION ABOUT THE VICTIMS' REPRESENTATIVES

268. In accordance with the Court's Rules of Procedure, the Inter-American Commission hereby informs the Court that, in a communication dated December 31, 2009, the petitioners have indicated that "the victims and their families will be represented in this case by Tomás Castro Monegro and Rafael Domínguez, in their capacity as members of the Truth Commission, and by Viviana Krsticevic and Ariela Peralta of the Center for Justice and International Law (CEJIL) "



Washington, D C

May 2, 2010