

**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON
HUMAN RIGHTS WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE STATE OF PERU**

**CASE 11.062
SANTIAGO FORTUNATO GÓMEZ PALOMINO**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") hereby submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") an application brought against Peru (hereinafter "the Peruvian State," "the State," or "Peru") in case 11,062 (Santiago Fortunato Gómez Palomino) for the forced disappearance of Santiago Fortunato Gómez Palomino¹ on July 9, 1992, in Lima, Peru, and related facts, including the fact that the events have gone unpunished to this day, more than twelve years after his disappearance.

2. The Inter-American Commission is requesting the Court to adjudge and declare that the Peruvian State's international responsibility is engaged for its failure to comply with its international obligations in that it has violated articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 4 (Right to Life), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), to the detriment of Santiago Fortunato Gómez Palomino. The Peruvian State has also violated Article 5 (Right to Humane Treatment) in combination with Article 1(1), to the detriment of Santiago Fortunato Gómez Palomino's mother, Victoria Margarita Palomino Buitrón, and the person who was his partner at the time of his disappearance, Esmila Liliana Conislla Cárdenas. The State has also violated articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 7(6) in relation to Article 1(1), to the detriment of Santiago Fortunato Gómez Palomino's family and Esmila Liliana Conislla Cárdenas. Finally, by adopting and failing to amend Article 320 of the Penal Code now in force in Peru, which defines the crime of forced disappearance, the Peruvian State has failed to comply with its obligation under Article 2 (Domestic Legal Effects) of the American Convention and Article 1 of the Inter-American Convention on Forced Disappearance.

3. The present application has been processed in accordance with the American Convention and is being filed with the Court pursuant to Article 33 of the Rules of Procedure of the Inter-American Court of Human Rights. Attached as an appendix to this application is a copy of Report 26/04, prepared pursuant to Article 50 of the Convention.² The Commission adopted this report on March 11, 2004, then forwarded it to the State on

¹ For purposes of the present application, the victim's name will be rendered as it is shown on his birth certificate. This was also the name used by his mother when the original complaint was filed. See Appendix 2. Copy of the Birth Certificate of Santiago Fortunato Gómez Palomino, birth number five thousand seven hundred ninety-four, copy issued on December 10, 2002, No. 0026382. This precaution is being taken as the name that appears in the Voter Identification is Fortunato Santiago Gómez Palomino. See Appendix 3, Copy of the Voter Identification of Santiago Fortunato Gómez Palomino, No. 00994579.

² See Appendix 1, Report 26/04, Case 11,062, Santiago Fortunato Gómez Palomino, Peru, March 11, 2004.

April 13, 2004. It gave the State two months in which to adopt the recommendations contained therein.

4. On June 28, 2004, the State requested from the Commission a two-month extension of the time period set forth in Article 51(1) of the American Convention. It expressly and irrevocably conceded that the effect of that concession would be to suspend the time period set forth in Article 51(1) of the Convention to bring the case to the Court. On July 7, 2004, the Commission acceded to that request and gave Peru the two-month extension, effective June 28, 2004 up to August 27, 2004. During that time it was to adopt the recommendations contained in Report No. 26/04. On August 27, 2004, the State requested a five-day extension to send its information on compliance with the recommendations contained in the Commission's report. That five-day extension was granted, and the new deadline became September 1, 2004.

5. By note number 7-5-M/302, dated September 1, 2004, and received at the Commission that same day, the State requested another three-month extension to comply with the Commission's recommendations. That request was not granted. On September 12, 2004, the Inter-American Commission decided that because the State had failed to satisfactorily comply with its recommendations, it would submit the present case to the jurisdiction of the Inter-American Court, pursuant to articles 51(1) of the Convention and 44 of the Commission's Rules of Procedure.

6. The Commission must underscore the importance of bringing the present case to the Court. The forced disappearance of persons is a continuing violation of multiple essential and non-derogable rights of the individual. In the instant case, that violation continues to this day, inasmuch as the State has not established the whereabouts of the victim and has not found his remains. It has failed to prosecute and punish those responsible and has failed to ensure the next of kin adequate compensation. The total impunity with regard to the disappearance of Santiago Fortunato Gómez Palomino serves to prolong the suffering caused by the violation of his fundamental rights. It is the Peruvian State's duty to provide an adequate judicial response that establishes the identity of those responsible for Santiago Fortunato Gómez Palomino's forced disappearance, locate his mortal remains, and adequately compensate his next of kin.

II. PURPOSE OF THE APPLICATION

7. The purpose of the present application is to respectfully ask the Court to adjudge and declare that:

a. The Peruvian State has violated articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment) and 4 (Right to Life) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino by the latter's unlawful detention, forced disappearance, and presumed death, all attributed to the State and carried out in Lima, Peru, starting on July 9, 1992.

b. The Peruvian State has violated Article 5 (Right to Humane Treatment) of the American Convention, in combination with Article 1(1) thereof, to the detriment of Victoria Margarita Palomino Buitrón and Esmila Liliana Conislla Cárdenas, because of the pain and suffering caused by the forced disappearance of Santiago Fortunato Gómez Palomino. Further, at the time of Santiago Fortunato Gómez Palomino's unlawful and arbitrary detention, Esmila Liliana Conislla Cárdenas was the victim of mistreatment and abuse, in violation of Article 5 of the American Convention, in combination with Article 1(1) thereof.

c. The Peruvian State has violated articles 8 (Right to a Fair Trial), 7(6) and 25 (Right to Judicial Protection), in combination with Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of Santiago Fortunato Gómez Palomino, his family, and the person who was his partner at the time of his disappearance, Esmila Liliana Conislla Cárdenas, due to the inefficacy of petitions of *habeas corpus* at the time the events in this case occurred and the total impunity with regard to Santiago Fortunato Gómez Palomino's forced disappearance.

d. The Peruvian State has failed to fulfill its obligation under Article 2 (Domestic Legal Effects) of the American Convention, and Article 1 of the Inter-American Convention on Forced Disappearance of Persons, by adopting and not amending Article 320 of the Penal Code now in force in Peru, which defines the crime of forced disappearance.

8. The Inter-American Commission is therefore requesting that the Court order the State:

- a. To conduct a thorough, impartial, effective and immediate investigation of the facts in order to establish responsibilities in the disappearance and presumed assassination of Santiago Fortunato Gómez Palomino for the purpose of identifying all those who had a hand in the crime, at the various levels of decision-making and actual execution, prosecuting them, trying them, and duly punishing them.
- b. To conduct a complete, impartial and effective investigation of the persons who had a hand in the failed investigations and proceedings previously conducted into the disappearance of Santiago Fortunato Gómez Palomino, to determine who was responsible for the failure to produce results and for the fact that the crime went unpunished.
- c. To make adequate reparations to Mrs. Victoria Margarita Palomino Buitrón, the victim's mother, and his partner, Esmila Liliana Cunislla Cárdenas, for the human rights violations of which they were immediate victims. Said reparations should include both material and moral damages for the violations of their human rights. Further, to make reparations for the violations committed against Santiago Fortunato Gómez Palomino, through his beneficiaries.

- d. To take the necessary measures to search for, locate, and identify the victim's remains and deliver them to his next of kin.
- e. To adopt the measures necessary to amend Article 320 of the Penal Code, to make it compatible with the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons.
- f. To reimburse the costs and expenses that the victims and their next of kin have incurred in their representations at the domestic level and in bringing their petition to the inter-American system for the protection of human rights.

III. REPRESENTATION

9. In accordance with articles 22 and 33 of the Rules of Court, the Commission has designated Commission members Freddy Gutiérrez, Evelio Fernández Arévalo and Florentín Meléndez, as well as Dr. Santiago A. Canton, Executive Secretary of the IACHR, as its delegates in this case. Drs. Ariel Dulitzky, Pedro E. Díaz, Victor Madrigal Borloz and Manuela Cuvi, specialists from the Commission's Executive Secretariat, have been designated as legal advisors.

IV. JURISDICTION OF THE COURT

10. The Honorable Court has jurisdiction in the present case. The State ratified the American Convention on Human Rights on July 28, 1978 and accepted the Court's contentious jurisdiction on January 21, 1981. Under Article 62(3) of the American Convention on Human Rights, the Inter-American Court's jurisdiction comprises all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction.

11. The Court also has jurisdiction to take up the present case by virtue of the fact that the Peruvian State ratified the Inter-American Convention on Forced Disappearance of Persons (hereinafter the "Convention on Forced Disappearance") on February 13, 2002. Under Articles III and VII of that instrument, the crime of forced disappearance "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined" and "shall not be subject to statutes of limitations." The Court has also characterized forced disappearance as a continuous offense, writing that it:

[...]implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established."³

³ IACHR; *Blake Case, Preliminary Objections*, Judgment of July 2, 1996. Series C No. 27, para. 39.

V. PROCEEDING BEFORE THE INTER-AMERICAN COMMISSION

12. On October 8, 1992, the Inter-American Commission received the original petition that Mrs. Victoria Margarita Palomino Buitrón, mother of Santiago Fortunato Gómez Palomino, lodged against the State of Peru. In keeping with the provisions of Article 34 of its Regulations in force at that time, the Commission began processing case No. 11,062 on October 13, 1992, and requested the State to supply pertinent information, giving it 90 days in which to do so. The State did not respond.

13. By note of June 29, 1998, the IACHR asked the petitioner and the State to update the relevant information. On August 17, 1998, the State replied by requesting that the petition be declared inadmissible. That information was forwarded to the petitioner by note of September 4, 1998. On December 16, 2002, the IACHR again asked the petitioner to update its information. By note dated February 11, 2003, the *Asociación Pro Derechos Humanos* [Pro Human Rights Association - APRODEH] sent information on the matter.

14. In application of Article 37(3) of the Commission's Rules of Procedure, by note of July 25, 2003, the Commission informed the Peruvian State and the petitioners that it had decided to defer treatment of the admissibility of the case until the discussion and decision on its merits. The parties were asked to submit their final observations on the merits of the case within two months.

15. On September 23, 2003, the petitioners presented their additional observations on the merits. On October 20, 2003, the Commission advised the parties of its decision to join this case with Case No. 11,767 - Bernabé Baldeón García. That same day, it forwarded to the State the briefs that the petitioners in both cases had filed on the merits, so that the State would present its observations within two months.

16. By note of January 12, 2004, the IACHR advised the parties of its decision to process cases 11,062 and 11,767 separately, in application of Article 29(d) of its Rules of Procedure. Upon examining the merits, the Commission found that the requirements set forth in that article for the two cases to be joined had not been met.

17. On March 11, 2004, during its 119th regular session, the Commission considered the parties' positions and approved Report number 26/04 on the admissibility and merits of the case, pursuant, *inter alia*, to articles 46, 47 and 50 of the American Convention and articles 31, 32, 33, 34, 37(3) and 42 of its Rules of Procedure. In that report, the Commission concluded the following on the matter of admissibility:

"The Commission concludes that it is competent to take cognizance of this case and that the petition is admissible under articles 46 and 47 of the American Convention".⁴

⁴ See Appendix 1, Report 26/04, Case 11,062, Santiago Fortunato Gómez Palomino, Peru, March 11, 2004, para. 125.

18. Regarding the merits, the Commission concluded that:

... Peru is responsible for violation of the rights to personal freedom, to a fair trial, to judicial protection, to humane treatment and to life, to the detriment of Santiago Fortunato Gómez Palomino, his mother Margarita Palomino Buitrón, his companion Esmilia Liliana Cunislla Cárdenas and their son. The Commission also finds that the State violated its duty to adopt legislative and other measures to give effect to those rights and freedoms, required under Article 2 of the American Convention, its obligation under Article 1(1), which is to respect and ensure the rights recognized in the Convention, and Article 1 of the Inter-American Convention on Forced Disappearance of Persons.⁵

19. Based on the analysis and conclusions arrived at in that report, the Inter-American Commission recommended to the Peruvian State that it:

1. Conduct a thorough, impartial, effective and immediate investigation of the facts in order to establish responsibilities in the disappearance and assassination of Santiago Fortunato Gómez Palomino, to identify all those who had a hand in the crime, at the various levels of decision-making and actual execution, prosecute and try them and punish them in accordance with the law.
2. Conduct a complete, impartial and effective investigation of the persons who had a hand in the failed investigations and proceedings previously conducted into the disappearance of Santiago Fortunato Gómez Palomino, to determine who was responsible for the failure to produce results and for the fact that the crime went unpunished.
3. Make adequate reparations to Mrs. Margarita Palomino, the victim's mother, his companion Esmilia Liliana Cunislla Cárdenas and their son, which should include moral and material compensation for the violations of their human rights.
4. Conduct the inquiries necessary to look for, locate, and identify the victim's remains and deliver them to his next of kin.
5. Adopt the measures necessary to amend Article 320 of the Code of Criminal Procedure, to make it compatible with the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons.⁶

20. On April 13, 2004, the Inter-American Commission, acting in accordance with Article 43(2) of its Rules of Procedure, forwarded the admissibility and merits report to the State. It set a two-month deadline for the State to report on the measures taken to comply with the recommendations the Commission made in that report. On that same date and in accordance with Article 43(3) of its Rules of Procedure, the Commission notified the petitioners of the adoption of the report and its transmittal to the State and asked for their position as to whether the case should be submitted to the Court.

21. By letter dated May 12, 2004, the petitioners expressed their willingness to have the case submitted to the Court. They also provided personal data on the victim

⁵ *Ibid.*, para. 126.

⁶ *Ibid.*, para. 127.

and, for the first time, personal data on some of the members of his family, including the daughter of Santiago Fortunato Gómez Palomino, Ana María Gómez Guevara.

22. By note 7-5-M/224 of June 28, 2004, received at the Commission that same day, the State requested that the Commission grant it a two-month extension on the deadline provided for in Article 51(1) of the American Convention, and expressly and irrevocably recognized that the effect of that extension would be to suspend the time period set forth in Article 51(1) of the Convention to present the case to the Court. On July 7, 2004, the Commission acceded to the State's request and gave it a two-month extension, effective June 28 and ending on August 27, 2004, for purposes of adopting the recommendations contained in Report No. 26/04.

23. By note 7-5-M/299 of August 27, 2004, received at the Commission that same day, the State requested a five-day extension to report on compliance with the recommendations contained in the Commission's Report No. 26/04. Its request was granted that same day, making the new deadline September 1, 2004.

24. By note number 7-5-M/302, dated September 1, 2004, received at the Commission that same day, the Peruvian State submitted a response. By note 7-5-M/315 of September 9, 2004, the State expressed "its decision to seek a friendly settlement of the case as soon as possible." By note number 7-5-M/320 of September 10, 2004, the State requested an additional three months to comply with the Commission's recommendations. On September 13, 2004, after consulting the victims' representatives, the Commission decided not to grant the requested extension.

25. On September 12, 2004, in view of the State's failure to comply with the recommendations contained in the report approved under Article 50 of the American Convention and in keeping with articles 51(1) of the Convention and 44 of its Rules of Procedure, the Inter-American Commission decided to submit the present case to the Court. The son of Esmila Liliana Conislla Cárdenas, who was regarded as a victim in the report on the merits, is not included among the victims named in this application inasmuch as the child's mother later provided information, subsequent to the adoption of Report No. 26/04, to the effect that the child in question is not the biological son of Santiago Fortunato Gómez Palomino and had no filial kinship to him.

VI. THE FACTS

A. General context

26. As Peru's Truth and Reconciliation Commission (hereinafter the "CVR") wrote, forced disappearance has historically been a tactic used by authoritarian or dictatorial regimes to repress and intimidate the public. That tactic became more widespread in Latin America in the 1960s, 1970s and 1980s, especially in countries with

military dictatorships or authoritarian or *de facto* governments, or those that experienced internal armed conflicts.⁷

27. In Peru, the practice of forced disappearance as a policy of the State for controlling public order, increased to significant numbers in 1983 when the armed forces replaced the police in managing and controlling the situation created by subversive activities in the department of Ayacucho.⁸ Then, from 1989 to 1993, forced disappearance became systematic practice nationwide.⁹ This, combined with the absence of simple and swift judicial remedies like *habeas corpus* (*infra*, paragraphs 43 and 111-112) created in the country a climate that was incompatible with effective protection of the right to life.¹⁰ As the CVR observed, the systematic nature of the tactic presupposes

"a standard operating procedure, a set of established procedures by which to identify, select and process the victims, and the elimination of the evidence –particularly the victims' bodies– of the crimes committed in following that procedure (...) The scale on which forced disappearance was used also presupposes a logistical apparatus that provided the means and the personnel to apply it."¹¹

28. The Truth and Reconciliation Commission described the Peruvian State's anti-subversive strategy and the practice of forced disappearances:

⁷ Truth and Reconciliation Commission, *Final Report*, Lima: CVR, 2003, Volume VI, Chapter 1.2. Forced Disappearances, p. 57. Available at <http://www.cverdad.org.pe/lfinal/index.php>.

⁸ *Ibid.*

⁹ *Ibid.*, p. 113, para. 3 and 114, para. 7. See also, IACHR, *Report No. 51/99* Cases 10,471 Anetro Castillo Pezo, Alejandro Carhuamaca Vilchez, Juan Alberto Vásquez Gonzales, Arnaldo Ríos Vega, Reiner Ríos Rengifo, Elmer Barrera Del Aguila, David Rodríguez Ayachi, Guzmán Penchi Ubiachigua, Darwin Tapullima Huainacama, Venancio Pinchi Puyo and Antonio Santiago Chávez Ruiz, 10,955 Ricardo Fernando Del Río Adrián, 11,014 Esteban Ramos Huayanay, 11,066 Rafael Tello Acosta, 11,067 Violeta Campos Linares, 11,070 Mauricio Javá García, 11,163 Olivia Tejada Clemente and Beder Baca Alvarado Alvarado, Peru, April 13, 1999, paragraphs 68-75; IACHR, *Report No. 52/99*, Cases 10,544 Raúl Zevallos Loayza, Víctor Padilla Luján and Nazario Taype Huamani, 10,745 Modesto Huamani Cosigna, 11,098 Rubén Aparicio Villanueva, Peru, April 13, 1999, paragraphs 45-52; IACHR, *Report No. 53/99*, Cases 10,551, David Palomino Morales, Mario Pérez Caillahua, Juan Pareja Ayala, Teodoro Ayala Escriba, Valerio Zevallos, Julian García Palomino, Dora Gómez, Nilton Gámez Gómez and Juan Carlos Gámez Gómez, 10,803 Francisco Juan Fernández Galvez and Alcides Coppa Taipe, 10,821 Renán Jesús Simbrón Chávez, 10,906 Gerardo Yauri Colquechagua, 11,180 Jorge Auxilio De Los Angeles Briceño Orozco and Clemente Ramos Cardozo, 11,322 Rony Guerra Blancas and Milagros Flor Tupac Gonzáles, Peru, April 13, 1999, paragraphs 70-77; IACHR, *Report No. 54/99*, Cases 10,807, William León Laurente, 10,808 Alfonso Aguirre Escalante, 10,809 Eladio Mancilla Calle, 10,810 Constantino Saavedra Muñoz, 10,879 Zenón Huamani Chuchón, Julio Arotoma Cacñahuaray, Honorata Ore De Arotoma, Eleuterio Fernández Quispe, Napoleón Quispe Ortega, Onofredo Huamani Quispe and Luis Amaru Quispe, 11,037 Honorato Laura Luján, Peru, April 12, 1999, paragraphs 68-75; IACHR, *Report No. 55/99*, Cases 10,815 Juan De La Cruz Núñez Santana, 10,905 Wilian Guerra González, 10,981 Raúl Naraza Salazar, 10,995 Rafael Magallanes Huamán, 11,042 Samuel Ramos Diego, 11,136 Wilmer Guillermo Jara Vigilio, Peru, April 13, 1999, paragraphs 62-69; IACHR, *Report No. 56/99*, Cases 10,824 Eudalio Lorenzo Manrique, 11,044 Pedro Herminio Yauri Bustamante, 11,124 Eulogio Viera Estrada, 11,125 Héctor Esteban Medina Bonet, 11,175 Justiniano Najarro Rua, Peru, April 13, 1999, paragraphs 61-68; IACHR, *Report No. 57/99*, Cases 10,827 Romer Morales Zegarra, Richard Morales Zegarra and Carmen Teresa Rojas García, 10,984 Carlos Vega Pizango, Peru, April 13, 1999, paragraphs 28-35; IACHR, *Report No. 101/01*, Case 10,247 et al, Extrajudicial Executions and Forced Disappearances of Persons, Peru, October 11, 2001, paragraphs 172-179. See also IACHR, *Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, paragraphs 16 et seq..

¹⁰ *Cfr.* IACHR, *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 110.

¹¹ Truth and Reconciliation Commission, *Final Report*, *supra*, Volume VI, Chapter 1.2. Forced disappearances, p. 114, para. 7. The CVR took testimony recounting 4,414 cases of forced disappearances attributed to agents of the State, *ibid.*, p. 113, para. 3.

(...) when the anti-subversive strategy was applied to any given scenario, three successive stages were involved: destruction or expulsion of the local subversive guerrilla force, installation of forces to control the territory and the population, and destruction of the subversive movement's local political-administrative machinery. This third stage involved gathering information on members, sympathizers or collaborators of the subversive organizations operating in the areas controlled by the police and military, so as to eliminate them.

As with any clandestine organization, members of the PCP-Sendero Luminoso and the MRTA tried not to stand out from the rest of the population, making it difficult to identify them. Patient police intelligence work was required. Because of these problems, the practice of forced disappearance was used as a more expedient way of being able to detain those who fit the general profiles of supposed members of subversive organizations or their sympathizers, obtain information on the organization and its members on the spot, and then take steps to eliminate them.¹²

29. The CVR found that the *modus operandi* was generally to detain the victim at his home, in a public place, at checkpoints on roads, in roundups or when the victim was on his way to some government agency. The detentions involved violence; the perpetrators wore hoods, were armed and were in sufficient numbers to overpower any resistance. When the detentions were done in the home or at checkpoints, the suspect was followed or located beforehand. Then he was taken to some police or military unit where he was interrogated under torture. The information obtained was processed for military purposes and then a decision was made as to whether to release the person, execute him extra-legally, or whether he should become one of the disappeared. To destroy the evidence of the crimes committed during the forced disappearance, the victims' bodies were mutilated, incinerated, dumped or abandoned in remote, inaccessible areas. Occasionally they buried the remains at gravesites or scattered the remains in different places to make their identification difficult, while also instilling fear in the population.¹³

30. That pattern of systematic violation of human rights materialized in the case of Santiago Fortunato Gómez Palomino, and was the work of the Colina Group, a group of State agents whose existence, organization and subordination to the military the Peruvian State has acknowledged and is fully documented, as analyzed below at paragraphs 56 *et seq.*

31. As for Peru's domestic laws regarding forced disappearances, the 1979 and 1993 Peruvian Constitutions both uphold the rights to personal liberty, judicial protection, due process, the right to life and the prohibition of torture as fundamental rights that are among those violated or threatened with the forced disappearance of persons.¹⁴ Peru's 1991 Penal Code described forced disappearance as follows:

¹² *Ibid.*, p. 71.

¹³ *Ibid.*, p. 115, paragraphs 9 and 10.

¹⁴ See 1979 Peruvian Constitution, Article 2 (20), and 1993 Peruvian Constitution, Article 2 (24). For a detailed analysis of Peru's domestic laws on the subject of forced disappearances, see Truth and Reconciliation Commission, *Final Report, supra*, Volume VI, Chapter 1.2. Forced Disappearances, pp. 62 *et seq.*

Article 323: "Any public official or civil servant who deprives someone of his freedom by ordering or carrying out actions that result in that individual's disappearance, shall be imprisoned for no less than fifteen years and disqualified from the exercise of his rights as a citizen."¹⁵

32. On May 6, 1992, as part of the new anti-terrorist legislation that the government of president Alberto Fujimori introduced to fight subversive organizations, Article 323 of the Penal Code was repealed by Decree Law No. 25475.¹⁶ By Decree Law 25592 of July 2, 1992,¹⁷ the Peruvian Government again criminalized forced disappearance, as follows:

Article 1° - Any public official or civil servant who deprives someone of his freedom by ordering or carrying out actions that result in that individual's duly proven disappearance, shall be imprisoned for no less than fifteen years and disqualified from the exercise of his rights as a citizen, in accordance with Article 36, paragraphs 1 and 2 of the Penal Code.¹⁸

33. Decree Law 25592 was struck down by Law Number 26926 of February 21, 1998. The new law introduced "disappearance by a public official or civil servant" as a crime against humanity in Article 320 of the Penal Code, using the definition cited above. This is the definition of forced disappearance still in effect in Peru.

B. The forced disappearance of Santiago Fortunato Gómez Palomino

34. Santiago Fortunato Gómez Palomino was born in Lima on May 13, 1965.¹⁹ He was single, had a secondary education²⁰ and, on the date the events occurred –July 9, 1992- was 27 years old. Just days earlier, he had moved to Block A, lot 2, in the "San Pedro de Chorrillos" Settlement in Lima, together with his partner Esmila Liliana Conislla Cárdenas and her son, who was only a few months old at the time. This was the home of his cousin, Mrs. María Elsa Chipana Flores.²¹ The victim worked from time to time as a

¹⁵ Legislative Decree No. 635, enacted April 3, 1991 and published on April 8, 1991, Article 323.

¹⁶ Decree Law 25,475. Establishes the penalties for the crimes of terrorism, and procedures for investigation, prosecution and trial, done May 5, 1992, published May 6, 1992, and in effect since that time. Article 22 has been in effect since that time.

¹⁷ As the CVR explains in its Final Report, from May 7 to July 1, 1992, forced disappearance was not a crime because of the vacuum created between the time one law was repealed and another enacted. Truth and Reconciliation Commission, *Final Report, supra*, Volume VI, Chapter 1.2. Forced Disappearances, p. 63, footnote 14.

¹⁸ Decree law No. 25592, Provides that public officials or civil servants who deprive a person of his liberty by ordering or carrying out acts that result in that person's disappearance, shall face penalty of imprisonment. Dated June 26, 1992, published July 2, 1992, and in force to this day.

¹⁹ See Appendix 2, copy of Santiago Fortunato Gómez Palomino's birth certificate.

²⁰ See Appendix 3, copy of voter registration identification of Santiago Fortunato Gómez Palomino.

²¹ See Appendix 15, transcript of the statement of María Elsa Chipana Flores, in the Office of Lima's Special Provincial Prosecutor, May 20, 2002, answer to questions 3, 4, 5, 23 and the elaboration of that statement given in the offices of the Metropolitan Special Investigations Division on March 10, 2003.

gardener and also at a Chorrillos restaurant. He was a member of the *Asociación Israelita del Nuevo Pacto Universal, Iglesia de Itillacta*, Chorrillos.²²

35. In the early morning hours of July 9, 1992, a group of men and women armed with FAL rifles and dressed in black turtlenecks and boots, burst into the victim's home. Their faces were covered with ski masks and they carried weapons and flashlights. They dragged Santiago Fortunato Gómez from the room where he was sleeping, beat and verbally abused him. They questioned him about certain names, one of which was a "Mr. Mendoza," supposedly the owner of the house. The intruders searched the entire house and overpowered Conislla Cárdenas and Chipana Flores, holding them at gunpoint. They tied the two women's hands and gagged them to prevent them from screaming. They asked Conislla Cárdenas her name and demanded to see her birth certificate. At gunpoint, they told her that they were going to cause her to disappear. One of the men covered her face and tied her hands, snatched her baby son from her arms and put him on the bed. She was left blindfolded, bound and gagged, facing the wall. They treated Mrs. Chipana Flores in much the same way. The intruders then took Santiago Fortunato Gómez Palomino away in vehicles that were waiting outside the house. They never said why he was being detained or where he was being taken, and never presented any court or other government order. Once they managed to untie themselves, Mrs. Chipana Flores and Mrs. Conislla Cárdenas went outside to see what had happened to Santiago Fortunato Gómez Palomino. They spotted a white vehicle driving away.²³

36. Conislla Cárdenas' account of the events went as follows:

05. QUESTION: Is it true that on July 09, 1992, unidentified persons entered the home located at Block A, lot 2, in the "San Pedro" Settlement, Chorrillos, and took away Fortunato Santiago Palomino? If so, please indicate the precise date and time of the event, how many intruders there were and whether a woman was among them. Also, please give us a detailed account of how and under what circumstances these events occurred.

ANSWER: Yes, it is true that on July 09, 1992, four persons entered the property in question: two men and two women. This happened at around 1:00 or 2:00 a.m. on July 09, 1992, which was one hour after we had gone to bed, inside the home of María Chipana where I was living with Fortunato Santiago. I don't remember the exact address. I had been living there for eight days when these events occurred. At around 01:00 a.m., there was a noise from the kitchen. Fortunato Santiago got up and headed outside or in the direction of the bathroom. Then, when Santiago returned and sat down to go back to bed, we heard

²² See Original petition that the mother of Santiago Fortunato Gómez Palomino, Margarita Palomino Buitrón, filed with the Inter-American Commission, dated October 5, 1992, which appears in the file containing the Commission's proceedings on the case, Appendix 29; Appendix 11, transcript of the statement that Victoria Margarita Palomino Buitrón made in the Office of Lima's Special Criminal Prosecutor, April 2002, answer to questions 6 and 25; and Appendix 15, answer to question 35.

²³ See APRODEH communication, dated September 23, 2003, which appears in the file containing the Commission's proceedings on the case, Appendix 29. See also the complaints that the victim's mother filed with the domestic courts, Appendices 4 and 5. See also Appendix 11, transcript of the statement that Victoria Margarita Palomino Buitrón made in the Office of Lima's Special Criminal Prosecutor, April 2002, answer to questions 8, 16, and 24; Appendix 12, transcript of the statement that Esmila Liliana Cosnilla Cárdenas gave in the offices of DIRCOTE, January 20, 2003, answer to questions 5 and 7; Appendix 15, transcript of the statement made by María Elsa Chipana Flores in the Office of Lima's Special Provincial Prosecutor, May 20, 2002, answer to questions 5, 7, 23, and elaboration of that statement given in the offices of the Metropolitan Special Investigations Division, March 10, 2003.

people running in the street. Then there was a big bang and the entrance to the house opened. I saw four people come inside. They grabbed Santiago. I grabbed my baby. But I saw Santiago, mouth down on the floor. They were hitting him with a rifle. They asked him about some names that I don't remember. He said he didn't know them. They insulted him and told him something like "you're Michigan" or something like that. Then they asked us for our papers. I told them my birth certificate was in my handbag, which was beside the bed. Fortunato told them his identification document was in the pocket of his trousers. But I didn't see whether Fortunato gave them his identification document or not. A man grabbed me, blindfolded me and tied my hands. He left my baby in front of me on the bed. I was told to sit facing the wall. It didn't realize when they took Fortunato Santiago away. After 5 or 10 minutes I heard these people leaving. María Chipana came into the room and took off my blindfold and untied my hands. We went to the street right away, but the only thing we saw was a white car that was driving off, about three blocks away. We stood there, in front of the house, not knowing what to do or where to go. María Chipana asked the neighbors if they had seen anything, but no one knew anything. All they said was that they had seen a white car driving away. I went to work at 6:00.²⁴

37. When asked to describe the physical features of the subjects who took away Mr. Gómez Palomino, the type of weapons and vehicles they used, and the terms they used while inside the house, the eyewitness stated the following:

I recall that four people entered the house, at least that's what I saw. The four of them had their faces covered with ski masks, were wearing black sweaters, dark trousers and boots. They carried rifles, but I can't say precisely what kind or describe their features. As for the vehicle, I saw only one white car driving away. I don't know what model it was. While here, these characters were insulting Fortunato, hitting him. They searched the entire house. They asked me my name and told me to show them my birth certificate. They threatened me not to scream and pointed a weapon at me, telling me they were going to disappear me. Then they asked me whether I knew two women and one man, whose names they mentioned. But right now I don't recall what the names were. These characters stayed about 5 minutes. I remember that everything happened very fast and when they were about to leave, I heard just one word "Leave" and nothing else. Then, everything was silent.²⁵

38. Mrs. Chipana Flores described the events as follows:

(...) Around 1:30 a.m. on July 9, 1992, intruders entered my house. From the voice I could tell that one was a woman. My house was made of matting and had two rooms, with a mat partition between them. The first room, which faced the street, was occupied by my cousin and his partner Liliana Conislla. I shared the other room with my son. That night my partner, Pablo Cruz Micha, was not at home, as he had left on the night of July 8, 1992, headed for "Cambio Noventa2" in Santa Teresa. At least that's what he told me. I remember that at the time of these events, I had been sleeping when a loud noise at the door woke me up. I heard the voices of several people. They were making a commotion, and were asking my cousin "Where's this Elena Jesusa Mendoza?" They asked him that several times. My cousin told them, "Do I know her? I don't know." But everything happened so fast that within moments some of the intruders were in my room. The lights were out, but one of them had a flashlight in hand. I was able to see that two men and a woman were in my room. I recall that the woman told me to kneel on the bed and they said they were going to tie me up. They covered my son, who was one year old at the time, with several blankets. They used my baby's clothes to gag me and tie me up. I also recall that the woman put a regular-sized gun

²⁴ Appendix 12, transcript of the statement made by Esmila Liliana Conislla Cárdenas, in the DIRCOTE offices, January 20, 2003, answer to question 5.

²⁵ *Id.*, answer to question 7.

to my head. But as I had heard them asking for Elena Jesusa Mendoza, before they gagged me I told them that I didn't know her and that if they wanted to find out, they should ask the secretary general of the settlement, since the names of everyone who lived there were on record. I figure everything happened in about five minutes. They left, taking with them my cousin Fortunato Santiago Gómez Palomino. I also remember that they tied up Liliana Conislla; we managed to untie ourselves. I don't know exactly how many people entered my house that night, but I know several came into my room. I saw them, dressed in black, using ski masks. I didn't see their shoes. I don't know whether they were all armed. I'd also like to say that they made no threats, left no pamphlets. They simply took my cousin away. But they did go through all my things. I don't know what they were looking for. They searched in the room, but took nothing. They took my cousin the way he was. I remember he was wearing a shirt. He had cooked that day and was dressed that way. I'd also like to add that I recognized the voice of my neighbor, Arcenio Gutierrez León among the people who were in my home that day. At one point he said "she's my neighbor", referring to me, and in response to their question about Elena Jesusa Mendoza; the next day I saw my neighbors Arcenio. I asked him what had happened and why. He told me that nothing happened to him. But clearly they left him behind because, after all, he woke up in his house. He didn't ask anything, because he wanted to forget what had happened. My neighbor didn't make any other comments about the number of people there were, how they were dressed. I recall that at the time there was no electric light in the settlement where I lived. We all used candles for lighting.²⁶

39. A neighbor of Mr. Gómez Palomino, Mr. Arcenio Antenor Gutiérrez León, was also roughed up in the early morning hours on July 9, 1992, in the very same operation. His testimony fully tallies with that of Mrs. Chipana Flores and Conislla Cárdenas as to the perpetrators' *modus operandi*, the type of firearms used, the military uniforms, the way they burst into the house, the way they tied up Conislla Cárdenas and Chipana Flores, and the vehicles in which they left:

5. Question: Is it true that in 1992, unknown persons entered your residence in San Pedro de Chorrillos, Block A, lot 04? If so, please indicate the precise hour, date, the manner and circumstances under which these events occurred.

Answer: Yes. That is so. In July 1992 -I don't recall the exact date, but it was around the beginning of the month- I was seized while in my home at the address you mentioned, at around 1:30 a.m. I should mention that approximately one hour earlier, I had been at a settlement meeting, together with the coordinators of each zone and sector. I had returned home at around 12:30 a.m. and had been sleeping about an hour when I heard them breaking down the door. I got up, thinking that thieves were breaking in. As I exited the door to my room, a man grabbed me. He was in military dress and wore a hood and boots. He asked me if I was MENDOZA. At that point, he told another hooded person who entered to come inside and search for the weapon. He even asked me where the weapon was. I didn't know what weapon he was talking about. By that point, he had me tied up and had me face down on the floor. All the while, he had a rifle aimed at my head. I'm certain it was an FAL. He kept repeating that I was Mendoza. I told him that I was not Mendoza. I asked my wife Gloria to pass me my voter identification to show him that I was not Mendoza. When she gave him the book they checked it and said "Oh, he's not the one." There was another hooded man standing at the door to my house talking to people outside. I believe there were three others. The lights in my house were off. I don't remember whether we already had electric power by then. I do remember, however, that I saw them bringing my neighbor Santiago Gómez Palomino in the direction of my house. That much I realized. I saw it because one of the

²⁶ Appendix 15, transcript of the statement of María Elsa Chipana Flores, in the Office of Lima's Special Provincial Prosecutor, May 20, 2002, answer to questions 5 and 23, and the elaboration of that statement given in the offices of the Metropolitan Special Investigations Division on March 10, 2003.

hooded men had a flashlight on Gómez Palomino's face. They didn't come into my house. I was still being held on the floor. Then they had me stand up and told me to look straight ahead. One of the hooded men that was bringing him over said "THIS IS HIM" to which Santiago replied "No, this is Arcenio." Then they told me to start walking and they took me to the home of my neighbor, María Chipana. It was then I realized that there was a woman in the group, and she seemed to be the one in charge. They were all dressed in military uniforms and wore black ski masks. One man's mask was different, however; it was like the masks that the highland dancers wear. It had drawings on it. When I was inside my house, I realized that they were bothering my wife or my children. All they did was ask that my son be silenced, because he was crying a lot. One of the hooded men had looked for something inside the house, whereupon we headed in the direction of the house of my neighbor Chipana. My wife and children stayed inside the house with other hooded men. As we were leaving for the Chipana house, I noticed Santiago Gómez Palomino; two hooded men had him up against my neighbors' car, which was parked outside. When I entered the Chipana house, I noticed that Santiago Gómez Palomino's wife was there with her hands tied and kneeling on a bed. There was a blanket drawn over her. I saw because there was light from a powerful flashlight. They uncovered her and asked me if she was "Micher." I told them I didn't know who she was. They then directed me to go into an adjacent room, where I saw my neighbor Chipana, also tied up, kneeling on a bed and covered with a blanket. Everything in the room was in disarray. Again they asked me, is this "Micher?" I said no, that this was Mrs. María Chipana. They took me out again and led me to the door of my house. I noticed that they still had Santiago Gómez in the same place. I didn't enter my house. The hooded man with me asked the woman, "And what do we do with him?" He was referring to me. The woman said "Let him go." The hooded man told me to run to the corner in the direction of the house of my neighbor who had a store, to the right of my house. At the corner, a hooded man with a FAL in his hand asked me "Where are you going?" I told him that they had told me to run. The hooded man at the corner told me to run in the direction of the hill; I did it, and turned around and headed in the direction of the house of my cousin, Leoncio Gutierrez. I was heading toward the hill at that point. Because I was desperate, I began calling out to the neighbors, asking for help and saying that there were robbers, terrorists. But no one answered me. When I turned around, I looked down and saw a dark pickup and a white car heading off. By that time it was 2:00 a.m. I remember there was a moon that night. I reached the house of my cousin, Leoncio Gutierrez, and told him what had happened. I asked him to help me get back home by crossing through his house, since it was made of matting. I wanted to see how my family was. When I got back, I found my wife and children crying. I recall that my wife told me that two more hooded men had come into our house and began to search. They told her not to cry and to calm down. They left when they didn't find anything. Because we were all nervous, my cousin boarded up the door to my house, which had been broken down. We all went to his house to spend the night. I should mention that the hooded man wearing the colored mask smiled when he saw me, as if he knew me. In fact, I thought there was something familiar about him. After that, I never went back to Mrs. Chipana's house and I've not seen Santiago Gomez Palomino since that night. I remember that the following day, Mrs. María Chipana came to my house in tears. She said that they had taken Santiago away and she wanted to know where she could go to make inquiries about him. I suggested that she go to the Chorrillos police station. I also want to add that when the hooded men asked me if I was Mendoza, I remembered that I knew two people by the name of Mendoza. They lived in San Genaro. From time to time, they played soccer with us. I don't know their full names. Then there was another by the name of Abilio Mendoza Laurente, who was my neighbor and at that time the Secretary General of the Settlement. I want to make clear that on the day this happened, the only Mendoza I mentioned was the one who lived in San Genaro. I don't know why -maybe it was nerves- but I didn't mention the other Mendoza who was my next-door neighbor.²⁷

²⁷ Appendix 13, Statement of Arcenio Antenor Gutiérrez Leon, July 19, 2002, question 5. See also question 9 and the answer to it, where the witness states that they were all wearing green Army or Peruvian National Police uniforms.

40. Both María Elsa Chipana Flores and Arcenio Antenor Gutiérrez León have stated that the person the abductors were looking for that night was probably Mr. Pablo Cruz Micha, the partner or spouse of Mrs. Chipana Flores. He is currently imprisoned in the "Castro Castro" penitentiary for the crime of terrorism.²⁸

41. Mr. Gómez Palomino's mother, Victoria Margarita Palomino Buitrón, saw her son for the last time one week prior to his disappearance. She learned of her son's disappearance from the victim's brother, Daniel Palomino Buitrón, who had himself been told by Mrs. Conislla Cárdenas.²⁹ The victim's mother immediately started going to police stations, hospitals and morgues to make inquiries, but to no avail.³⁰

42. On August 3, 1992, Mrs. Palomino Buitrón and Mr. Francisco Soberón Garrido, the latter representing the *Asociación Pro Derechos Humanos* (APRODEH), filed complaints with the Office of the Superior Prosecutor for Human Rights and the Office of the Attorney General of the Nation, without result.³¹

43. Within days of these measures, the Government issued Decree Law No. 25659, which was the statute governing the crime of treason. The new Decree Law held that petitions of *habeas corpus* could not be exercised on behalf of persons in custody for or accused or convicted of the crime of terrorism under Decree Law No. 25,475, or the crime of treason under Decree Law No. 25659.³² The remedy of *habeas corpus* was not restored for another year and three months, i.e., not until November 25, 1993, when Law No. 26248 was enacted.³³

44. When Lima's 7th Provincial Criminal Prosecutor's Office opened the inquiry, Victoria Margarita Palomino Buitrón was summoned to make a statement. This was almost one year after the events, on June 11, 1993.³⁴ She recalls having turned to various

²⁸ See Appendix 13, Statement of Arcenio Antenor Gutiérrez Leon, July 19, 2002, question 30 and the answer to it; and Appendix 15, transcript of the Statement that María Elsa Chipana Flores made in the Lima Provincial Special Prosecutor's Office on May 20, 2002, answer to question 2, and the elaboration of that statement given in the offices of Lima's Metropolitan Special Investigations Division, March 10, 2003, answer to question 11.

²⁹ See Appendix 11, transcript of the statement of Victoria Margarita Palomino Buitrón, April 2002, given in Lima's Special Criminal Prosecutor's Office, answer to questions 7, 8 and 23.

³⁰ *Id.* answer to question 8.

³¹ See Appendix 4, Copy of the complaint that Victoria Margarita Palomino Buitrón and Francisco Soberón Garrido, Coordinator General of APRODEH, filed with the Superior Prosecutor for Human Rights, dated 30 July 1992, with the receipt stamp showing August 3, 1992; Appendix 5, Copy of the complaint that Victoria Margarita Palomino Buitrón and Francisco Soberón Garrido, Coordinator General of APRODEH, filed with the Attorney General, dated July 30, 1992, with stamp of receipt showing August 3, 1992.

³² See Decree Law No. 25659, "Statute on the Crime of Treason", August 7, 1992, published in the Official Gazette, *El Peruano*, August 13, 1992, date on which it entered into force under the provisions of its Article 9.

³³ Law No. 26248, "Amendment of Decree Law No. 25659, in reference to the admissibility of petitions of *habeas corpus* in cases involving crimes of terrorism and treason," published in the Official Gazette of November 25, 1993, Article 2 that amends Article 6 of Decree Law No. 25659.

³⁴ See Appendix 6, Copy of the summons to appear to make a statement in connection with complaint 451-92, issued to Victoria Margarita Palomino Buitrón, dated June 11, 1993.

authorities at the time, who told her to come back later.³⁵ To this day, the State has not provided a copy of any records of proceedings conducted as part of that preliminary inquiry.

45. Despite the efforts made by the victim's relatives, no information surfaced that shed any light on his whereabouts. To the contrary, the State reported that the inquiries that the Ministry of the Interior made with the various metropolitan police stations in National Police Region VII and at the Police Stations of Callao, Cañete and Huancho turned up no record of the detention or disappearance of Mr. Santiago Gómez Palomino, nor was there any record of pending criminal proceedings or investigations. Nothing was found at the Anti-Terrorism Office, either. The State also indicated that when the victim's place of work was checked, Mrs. Marisol Rodríguez Tamango identified Mr. Gómez Palomino as of the Israeli faith (sic) and said that he was in the habit of disappearing from his surroundings for periods of time and traveling to Cañete. The State also suggested that the victim might have fallen prey to common criminals or terrorists.³⁶

46. As established at paragraphs 27-29, forced disappearance was systematic practice in Peru at the time of the victim's disappearance. It was a State policy, a method used against those whom the police authorities, the military or paramilitaries working with the acquiescence of the authorities, assumed were members of the Sendero Luminoso or Tupac Amaru Revolutionary Movement or that they assumed work acting as collaborators for logistical support or had expressed sympathy for their cause.

47. When democracy was restored in Peru, the transition government of President Valentín Paniagua reopened the investigations and the criminal proceedings for the Barrios Altos and La Cantuta massacres, attributed –along with other egregious acts– to the Colina paramilitary group. In the prosecution of these cases, different warrants were put out for the arrest of the members of the irregular group, one of whom was Julio Chuqui Aguirre. In the statements he made, he said that the disappearance of the 'evangelista' was one of the crimes committed by that illegal group.³⁷

48. The statements made by Julio Chuqui Aguirre triggered the launch of an investigation in the Office of the Special Prosecutor for Human Rights, at the time headed by Prosecutor Richard Saavedra Luján. In the course of those investigations, a statement was obtained from a member of the Colina Group, under the protection of the law on effective cooperation. According to reports in the press, the person providing the information was Julio Chuqui Aguirre himself.³⁸ That person made a statement describing

³⁵ See Appendix 11, answer to question 11.

³⁶ See the Peruvian State's Note 7-5-M/404 of August 17, 1998, para. 4, in the file of the Commission proceedings in this case, Appendix 29.

³⁷ See Appendix 7, copy of a press clipping "They began firing and people were dying." Confessions of the corruption network (IV). Former Colina agent narrates the Barrios Altos slaughter step-by-step. *Diario Perú* 21, Friday, March 14, 2003 edition, Report 21, pp. 8 and 9.

³⁸ The statements were leaked to the press in late 2002 (see APRODEH note of September 23, 2003, p. 2) and were purportedly made by Julio Chuqui Aguirre (See APRODEH note of December 4, 2003).

how the "evangelista" was detained, interrogated and assassinated, and also suggested the possible location of the victim's remains.³⁹

49. From the transcript of the statement made by collaborator 371-MCS on December 6, 2001, the Colina Group was allegedly behind the disappearance of Santiago Fortunato Gómez Palomino. A collaborator by the name of Julio "Yataco" allegedly provided them with information to the effect that in the "Los Pescadores" settlement of Chorrillos, "a group of people were meeting at a house; listening through the straw matting out of which that house was made, he had heard that there were weapons and dynamite and that they met frequently."⁴⁰ The operation was allegedly ordered by Major Martín Rivas and involved members of the Colina Group, among them Coral Goicochea, Chuqui Aguirre, Gamarra Mamani, José Alarcón, Ortiz Mantas, Sauñi Pomaya, Pretel Damaso, Martín Rivas, and Vera Navarrete:

When we arrived at the house, on orders from Martín Rivas, we broke down the door. All we found was a couple asleep inside. A search of the place turned up nothing in the way of weapons. When we had been there about 20 minutes, Major Martín Rivas said that we should withdraw, and take with us a male who was inside and who, according to the collaborator, had to know something (...). Then, on orders from Martín Rivas, we took the route leading back to the base; on the way, the man we detained was questioned, but we got no information. The only thing he said was that he was an "evangelista" and that he read the Bible. When we reached the beach at La Herradura, Major Martín Rivas told us to take charge of eliminating the man and burying his body, and "not to leave any trace behind." At that, some members of the group, Ortiz Mantas, Gamarra Mamani, Chuqui Aguirre, Pretell Damaso, Sauñi Tomaya, Coral Goicochea, José Alarcón and others, got out of the vehicle and went on foot to La Chira beach, while Major Martín Rivas and the other members of the group returned to Las Palmas. After walking about a half hour, with the abducted man in tow, we reached the beach in question. We forced the man to dig a hole in the sand, which he did, measuring approximately 1 meter and 20 centimeters in depth. At that point, Gamarra Mamani shot him about three times, with the HK weapon he had in his possession. After that, Gamarra Mamani, Ortiz Manta, Pretell Damaso, Alarcón, Sauñi Pomaya proceeded to bury him. We then left and headed for the vehicle that was waiting for us on the La Herradura parking lot; also waiting there were the collaborator and driver, whose name I don't remember. As we headed back to the base, each member of the group split off and headed for his respective home. The next day we met at the Las Palmas base and reported to Martín Rivas. He said that everything was okay, whereupon we left.⁴¹

50. A number of statements were taken thereafter, among them the statement of Mrs. Victoria Margarita Palomino Buitrón in April 2002,⁴² the statement of Mrs. Esmila

³⁹ See APRODEH's note of February 11, 2003, which is in the file of the Commission's proceedings in this case, Appendix 29.

⁴⁰ See Appendix 14, Transcript of the pertinent part of the statement made by collaborator 371 MCS in connection with the case titled "The Evangelista's Death," statement of December 6, 2001, p. 1.

⁴¹ Appendix 14, Transcript of the pertinent part of the statement from Collaborator 371 MCS in connection with the case called "The Evangelist's Death," made on December 6, 2001, pp. 1-2. See also at p. 2 the description of the type of weapons and logistical support they had, p. 3 on the use of ski masks, and p. 4 on the use of "Jorge Chávez" black turtlenecks that would cover their faces up to the nose.

⁴² See Appendix 11, transcript of the statement Victoria Margarita Palomino Buitrón made in the Office of Lima's Special Criminal Prosecutor, April 2002.

Liliana Conislla Cárdenas on January 20, 2003,⁴³ the statement of Mr. Arcenio Antenor Gutiérrez León on July 19, 2002,⁴⁴ and the statement of Mrs. María Elsa Chipana Flores on May 20, 2002.⁴⁵

51. Because the National Council of the Judiciary did not confirm Prosecutor Saavedra in his post, the investigation was suspended until the new prosecutor, Ana Cecilia Magallanes, was brought up to date.⁴⁶ Prosecutor Magallanes requested the Attorney General's authorization to take measures to exhume the remains of the Colina Group's alleged victims, one of whom was Santiago Fortunato Gómez Palomino:

More than three exhumations of persons alleged to have been assassinated by the "Colina" paramilitary group have been delayed for two weeks now, because Attorney General Nelly Calderón Navarro has not yet given her authorization for the experts from the Peruvian Team of Forensic Anthropologists (EPAF) to assist in the exhumation (...)

The victims...Another case is that of one 'Evangelista' who was abducted and is presumed murdered by a death squad, because they mistook him for the leader of a terrorist sympathizer group.⁴⁷

52. On December 11, 2002, Victoria Margarita Palomino Buitrón filed a complaint against Vladimiro Montesinos Torres and others. By a decision of that same date, the Prosecutor's Office decided to open a police inquiry, and referred the case files to the Anti-Terrorism Bureau.⁴⁸

53. Almost two years after the collaborator identified as 371-MCS indicated the possible location of Santiago Fortunato Gómez Palomino's remains, on November 12, 2003 the victim's mother, Victoria Margarita Palomino Buitrón, and APRODEH were notified by the Office of the Special Provincial Prosecutor that an excavation proceeding was planned around La Chira Beach in Chorrillos where the remains of Santiago Fortunato Gómez Palomino were said to have been secretly buried.⁴⁹

⁴³ See Appendix 12, transcript of statement that Esmla Liliana Conislla Cárdenas made in the offices of DIRCOTE, January 20, 2003.

⁴⁴ See Appendix 13, Statement of Arcenio Antenor Gutiérrez Leon, 19 July 2002, question 5. See also question 9 and the answer, where the witness states that they were all wearing green military uniforms belonging either to the Army or the Peruvian National Police (PNP).

⁴⁵ See Appendix 15, transcript of the statement that María Elsa Chipana Flores made in the Office of Lima's Special Provincial Prosecutor on May 20, 2002, and the elaboration of that statement given in the Metropolitan Special Investigations Division on March 10, 2003.

⁴⁶ See APRODEH communication dated February 11, 2003, which appears in the Commission's file on its proceedings in this case, Appendix 29.

⁴⁷ Appendix 8, Copy of press report, "Office of the State's Attorney holds up the exhumation of the remains of alleged "Colina" victims. Attorney General has not yet authorized the experts' work." *Diario La Razón*. December 9, 2002 edition.

⁴⁸ See Note No. 7-5-M/302, dated September 1, 2004, from the Peruvian State, in the Commission's case file, Appendix 29.

⁴⁹ See Appendix 9, copy of the notification sent to Victoria Margarita Palomino Buitrón, entry No. 020-2002, Lima, November 7, 2003.

54. The La Chira excavation work was conducted between November 13 and 19, 2003. However, the excavation work turned up nothing, as it did not locate the remains of Santiago Fortunato Gómez Palomino.⁵⁰ News reports published on November 14, 2003, in *La República* newspaper described the start of the excavation work, the information supplied by the collaborator, including some particulars on Mr. Gómez Palomino and the circumstances of his disappearance and subsequent assassination:

"(...) The Office of the Special Prosecutor for Human Rights located and yesterday began excavating a secret grave of persons detained and executed by the "Colina" Group in 1992 ." The site of the excavation work (...) is between some rocky outcroppings at La Chira beach in Chorrillos, some three kilometers from the *Pacifico* settlement in Chorrillos. The authorities were led to the site by testimony given by a former agent of the National Intelligence Service and member of the "Colina commando group," who had provided information under the protection of the law on effective collaboration. The prosecutor's office has documented the site as the burial place of Santiago Fortunato Gómez Palomino, member of the *Iglesia del Nuevo Pacto Universal*, headed by Ezequiel Ataucusi. Gómez Palomino was unlawfully detained when mistakenly identified as the head of a Senderista cell. The experts do not discount the possibility that other bodies will be found at the site. The former agent has said that on July 9, 1992, Santiago Martin Rivas and his friends detained Gómez Palomino and two other people, who also disappeared. Heretofore, Gómez had not been listed among the Colina Group's victims.

Who is Gómez? It was the collaborator who mentioned Gómez' name as one of the victims of Martin Rivas and his thugs. The witness has also provided information on the assassination of journalist Pedro Yauri Bustamante in Huaura on June 23, 1992; and of the students and the professor from La Cantuta University killed on July 18, 1992. He was in the middle of his account when he mentioned Santiago Gómez and others detained in Lima in the predawn hours of July 9, 1992.

Who is this person? The authorities asked who Gómez was. The witness only recalled his name and the fact that they had detained him in Chorrillos. The Asociación Pro Derechos Humanos (APRODEH) heard about the inquiries being made by the Office of the Attorney General. The Gómez family had gone to APRODEH looking for help after making the rounds of the police stations without finding their relative.⁵¹

55. Finally, it should be noted that in its Final Report of August 28, 2003, the CVR listed Gómez Palomino's name among the disappeared.⁵²

C. The Colina Group

56. On May 5, 1993, Peruvian Army General Rodolfo Robles Espinoza publicly denounced that Peru's National Intelligence Service (SIN) had organized a "Death Squad" called the Colina Group, charged with the physical elimination of terrorists. According to his complaint, members of the Colina Group were responsible for the illegal detention and

⁵⁰ See APRODEH communication of December 4, 2003, in the file of the Commission's proceedings in this case, Appendix 29.

⁵¹ Appendix 10, copy of the press clipping "A grave is found where Colina Group killed its victims and caused them to disappear. *La República*. November 14, 2003, available at www.larepublica.com.pe/diario/politica.htm.

⁵² See Appendix 17, Truth and Reconciliation Commission, *Final Report*, Lima: CVR, 2003, Appendices, Appendix 4: Cases and victims registered by the CVR, Volume XII. List of the Dead and Disappeared Reported to the Truth and Reconciliation Commission 1980-2000, p. 166. Available at <http://www.cverdad.org.pe/ifinal/index.php>.

subsequent extra-legal execution of a professor and nine students from La Cantuta University on July 17, 1992,⁵³ as well as the massacre of 14 people in the events known as "Barrios Altos" in November 1991.⁵⁴ General Robles revealed the names of the military personnel in that "death squadron" and indicated that Army General Commandant Nicolás de Bari Hermoza Ríos and the advisor to President Fujimori, Vladimiro Montesinos, were involved as they were the intellectual authors of these crimes and had masterminded the cover-ups.⁵⁵

57. Since the statements made by General Rodolfo Robles Espinoza, statements made by former members of the group and other evidence have exposed the group's existence to the public. That evidence reveals that the Colina Group was an extermination unit within the Army's Intelligence Service. It was the brainchild of the then recently installed administration of President Alberto Fujimori in 1990, conceived as a strategy for combating terrorism. Under the direction of Vladimiro Montesinos Torres, at the time President Fujimori's advisor on intelligence matters, captains Santiago Martín Rivas and Carlos Eliseo Pichilingue Guevara, members of the Army's Intelligence Service, were selected and promptly promoted to the rank of major. The group was set up directly as part of the hierarchy of the Peruvian Army's military intelligence. Its activities and operations were always crafted and cleared from the Executive Branch, with then President Fujimori's full knowledge.⁵⁶

⁵³ See Appendix 16.a. Copy of press report, *La República*, "In a document written in his own hand, Peruvian Army General Rodolfo Robles denounces: There is an assassination group in the Army, headed by Vladimiro Montesinos," May 7, 1993. See also transcript of his statements to the IACHR, *La Cantuta Case*, Case 11,045, Admissibility Report No. 42/99 dated March 11, 1999, para. 24. See also Press Release of February 22, 2001, that the Peruvian State and the Commission signed in connection with the *La Cantuta Case*.

⁵⁴ IACHR, *Barrios Altos Case*. Judgment of March 14, 2001, Series C No. 75, paragraphs 2(d) and 39. See also the State's note of September 1, 2004, where it advises on the Report of the Ad Hoc Prosecutor's Office for cases related to Alberto Fujimori Fujimori and Vladimiro Montesinos Torres, involving the Colina Group, para. 2.5. It is public knowledge that the Peruvian State is seeking Mr. Fujimori's extradition to Peru in connection with these matters.

⁵⁵ After General Rodolfo Robles Espinoza denounced these facts, he and his family received death threats and were harassed, threatened with criminal prosecution and disciplinary action based on false charges filed with the Superior Council of the Armed Forces. The latter ordered that General Robles be retired. He filed a complaint with the IACHR, which was classified as No. 11,317. On February 23, 1999, the IACHR approved Report 20/99 on the merits of Case 11,317, wherein it found that the Peruvian State had violated the right to a fair trial, the right to judicial protection, the right to personal liberty, the right to have one's honor respected and one's dignity recognized, and the right to freedom of expression and thought, to the detriment of General Rodolfo Robles Espinoza. At the Commission's 116th regular session, representatives of the State, General Robles Espinoza and his representatives signed a friendly settlement agreement in which the State acknowledged international responsibility for those violations. See Appendix 16. b. Friendly settlement agreement, IACHR Case No. 11,317, General (R) Robles Espinoza.

⁵⁶ See Appendix 16.c. Truth and Reconciliation Commission. *Final Report*, pp. 657-658, concerning the disappearance of Pedro Yauri. There the CVR concludes that the crime was the work of the "Colina" group. See also Appendix 16. d. Copy of press report "Martín Rivas acknowledges the existence of Colina," *Perú.21*, December 10, 2002, *Política*, p. 6 ("During the interrogation, Martín Rivas admitted that he headed up the Colina base which, he claimed, investigated and analyzed the Sendero Luminoso and MRTA terrorist groups. As part of the analysis work, the former Army major stated, "alternative solutions" were proposed, which were to be carried out by Army personnel... According to the statements made by Colina members Julio Chuqui Aguirre, Marcos Flores and Shirley Rojas, these "alternative solutions" materialized in the form of crimes committed by the paramilitary group, which killed, left and right, those suspected of being somehow associated with some subversive group.") See Appendix 16.e. Copy of a press report, "20 more former Colina agents are identified: *Perú.21*, October 29, 2002, *Política*, p. 6. See Appendix 16.f. Copy of a press report, "Colina Group created by Montesinos," *Perú.21*, November 19, 2002, p. 8; copy of a press report, "The Doc brought Martín Rivas from Colombia," *Perú.21*, November 21, 2002, pp. 8 and 9; "Martín Rivas ready to testify against Fujimori," *Perú. 21*, November 20, 2002, p. 9. See Appendix 16. g. Copy of press report "Hermosta confessed that "Colina" operated with Fujimori's full knowledge," *La República*, August 7, 2003. See Appendix 16.h, copy of press report, "Colina paramilitary group had its

58. Given all the evidence and background information, during the proceedings on the *Chumbipuma Aguirre et al. Case (The Barrios Altos Massacre)* the State admitted the facts recounted in the application and acknowledged its international responsibility for them.⁵⁷

59. The Report of the Truth and Reconciliation Commission states the following:

The so-called «Grupo Colina», composed of Army personnel, is perhaps one of the best known groups specializing in forced disappearance and arbitrary executions ... In 1991, the top military and political figures at that time decided that intelligence operatives (*agentes de inteligencia de operaciones* - AIO) with Army Intelligence (*Servicio de Inteligencia del Ejército* - SIE) should form a commando group attached to the Peruvian Army Intelligence Bureau [*Dirección de Inteligencia del Ejército Peruano* - DINTE]. The group was known as the «Destacamento Colina» and was in charge of operations specifically designed to eliminate alleged subversives and subversive organizations' sympathizers or collaborators.⁵⁸

60. In the investigation done into the forced disappearance of Santiago Fortunato Gómez Palomino, collaborator 371-MCS, who was a member of the Colina Group, said the following about the group's characteristics and its ties to the highest echelons of the military:

Question: "Was the information supplied by Mr. Julio Yataco then used to prepare an intelligence report that ultimately led to the intervention." Answer: "I don't know about any document; what was given to Major Martín Rivas -the information from the "collaborator" and the information gleaned from the checks conducted- was verbal. However, with any mobilization of troops or groups of operatives, it was both customary and necessary - particularly in the case of the Colina Group- that there be authorization from the head of DINTE, from the Commander General of the Army and from Vladimiro Montesions. Colonel Oliveros from the SIE also had to have knowledge of the operations. This was to explain the disbursement of funds for transportation, food, and logistical support of personnel. As operative-in-chief, Major Martín Rivas reported to General Rivera Lazo, who was the top chief of the Colina Group. Through channels, General Rivera Lazo had to report to the Commander General of the Army and the Army High Command."⁵⁹

61. The Colina Group was an established group within the Peruvian Army's National Intelligence Service and was created, organized and directed from the Office of the President of the Republic and the Army High Command. It had its own hierarchy, budget, and personnel dedicated fulltime to carrying out State policy, i.e., to identify,

own budget," *La República*, November 6, 2003 edition. See also, *Ojo por ojo. La verdadera historia del Grupo Colina [Eye for an Eye: the real story of the Colina Group]*. Umberto Jara. Editorial Norma, September 2003, pp. 72, 101, 106, 120. See also United Nations, Report of the Special Rapporteur, Mr. B. W. Ndiaye, on his mission to Peru, May 24 to June 2, 1993, E/CN.4/1994/7/Add.2, November 15, 1993, para. 54.

⁵⁷ IACHR, *Barrios Altos Case*, *supra*, paragraphs 2(d) and 39.

⁵⁸ See Appendix 16.i. Truth and Reconciliation Commission, *Final Report*, *supra*, Volume VI, Section four, 1.3., p. 154. Available at <http://www.cverdad.org.pe/ifinal/index.php>. (The page numbers in the version published in the November 2003 are different from the December 2003 CD version).

⁵⁹ See Appendix 14, p. 4.

control and eliminate persons suspected of belonging to rebel groups. It did this through systematic and indiscriminate extra-legal executions, selective assassinations, forced disappearance and torture. Mr. Santiago Fortunato Gómez Palomino was unlawfully detained by the Colina Group, because he was mistaken for someone else suspected of having ties with the Sendero Luminoso. Santiago Fortunato Gómez Palomino was not the real target of the operation. However, he was made to disappear as a result of the cruelty of his abductors. After more than twelve years, the violations committed against him and his family remain in absolute impunity.

VII. THE ASSESSMENT OF THE EVIDENCE

62. From its earliest case law, the Court has established that procedures before the Court are not subject to the same formalities as in domestic judicial proceedings for assessment of evidence. It has consistently held that a rigid determination of the *quantum* of the evidence necessary as the basis for a ruling does not apply, deeming that international courts have the authority to appraise and assess evidence based on the rules of competent analysis. This criterion is especially valid with respect to international human rights courts, which –in order to establish the international responsibility of a State for violation of the rights of a person- have ample flexibility in assessing the evidence submitted to them regarding the pertinent facts, in accordance with the rules of logic and based on experience.⁶⁰

63. Of particular importance in the instant case are the assessment and scope of the presumptive evidence that follows from the facts and that, based on experience, are both valid and logical unless contradicted by direct proof. In cases of forced disappearance, whose purpose is to erase any material evidence of the crime, the Court has held that “the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference.”⁶¹ The Court has also held that the disappearance of a person amid a context of violence creates a reasonable presumption that he was killed.⁶² Since as far back as the *Velásquez Rodríguez* and *Godínez Cruz* cases

⁶⁰ IACHR, *Case of the Gómez Paquiyauri Brothers vs. Peru*, Judgment of July 8, 2004, Series C No. 110, para. 41 citing from the *Maritza Urrutia Case*, Judgment of November 27, 2003, Series C No. 103, para. 48; *Myrna Mack Chang Case*, Judgment of November 25, 2003, Series C No. 101, para. 120; *Bulacio Case*, Judgment of September 18, 2003, Series C No. 100, para. 42; *Juan Humberto Sánchez Case. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations* (Art. 67 American Convention on Human Rights), Judgment of November 26, 2003, Series C No. 102, para. 42.

⁶¹ See IACtHR, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C No. 4, para. 131, on the importance of circumstantial or presumptive evidence.

⁶² IACHR, *Bámaca Velásquez Case*, Judgment of November 25, 2000, Series C No. 70, para. 173 citing the *Castillo Páez Case*, Judgment of November 3, 1997, Series C No. 34, paragraphs 71-72; *Neira Alegría et al. Case*, Judgment of January 19, 1995, Series C No. 20, para. 76; *Godínez Cruz Case*, Judgment of January 20, 1989, Series C No. 5; para. 198; and *Velásquez Rodríguez Case*, *supra*, para. 188.

on forced disappearance, the Court has found that torture often preceded death in cases of prolonged detention when no judicial oversight was present.⁶³

64. Therefore, the determination that a case fits into a pattern of human violations also has evidentiary consequences. The Court has held that if it can be shown that a particular case is the result of the pattern of human rights violations being alleged, "it is reasonable to assume and conclude that there is an international responsibility of the State."⁶⁴ Therefore, "the Court has established that if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven."⁶⁵

65. The case law of the Honorable Court has attached significant weight to "press clippings" as evidence, especially in cases of forced disappearance,⁶⁶ inasmuch as one of the characteristics of forced disappearance is not to leave tracks or material evidence and thereby obstruct the investigation.⁶⁷

66. The Final Report of the Truth and Reconciliation Commission, dated August 28, 2003, is of particular importance, in that it makes a significant contribution toward clarification of the egregious human rights violations that occurred in Peru in the last two decades.⁶⁸ The social science method used to investigate the facts, the discovery of patterns of human rights violations, identification and quantification of victims, construction of a map of violence and burial sites: this and more involved compiling evidence and data that will surely arm the courts with greater evidence with which to solve certain specific cases, ascertain responsibilities and apply the appropriate sanctions. On

⁶³ IACHR, *Velásquez Rodríguez Case*, *supra*, para. 156; *Godínez Cruz Case*, *supra*, para. 164.

⁶⁴ IACtHR, *Juan Humberto Sánchez Case*, Judgment of June 7, 2003, *supra*, para. 108. Cf. *Bámaca Velásquez Case*, *supra*, para. 130-131; *Cantoral Benavides Case*, Judgment of August 18, 2000. Series C No. 69, para. 47-48; *Durand and Ugarte Case*, *supra*, paragraphs 47-48; *Blake Case*, Judgment of January 24, 1998. Series C No. 36, paragraphs 47, 49, 51; *Godínez Cruz Case*, *supra*, paragraphs 127 and 130; and *Velásquez Rodríguez Case*, *supra*, para. 124.

⁶⁵ IACHR, *Bámaca Velásquez Case*, *supra*, para. 130.

⁶⁶ IACHR, *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C No. 99, para. 56 *citing* Cantos Case, Judgment of November 28, 2002. Series C No. 97, para. 39; *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 78; *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001, Series C No. 66, para. 94. See also *Velásquez Rodríguez Case*, *supra*, para. 146.

⁶⁷ See in this regard, The Truth and Reconciliation Commission, *Final Report*, *supra*, Volume VI, Chapter 1.2. Forced disappearance of persons by agents of the State, p. 72 ("once the information was obtained, the detained person could be eliminated and his/her body disposed of in such a way as to make it difficult to find or identify the victim, leaving nothing behind that might point to the identity of the perpetrators of the killing and torture. In many cases, this was assured by destroying the bodies, mutilating them, burning them or blowing them up. The Truth and Reconciliation Commission has sufficient evidence to show that deliberate efforts were made to eliminate the direct evidence of the crimes committed in association with forced disappearances.")

⁶⁸ The Truth and Reconciliation Commission was created by the President of the Republic through Supreme Decree 065 of June 4, 2001. Its name was changed under Supreme Decree No. 101-2001-PCM. See Article 1 of Supreme Decree No. 065-2001-PCM (A Truth Commission is hereby created, charged with shedding light on the history, the facts and the blame for the terrorist violence and human rights violations that occurred between May 1980 and November 2000, attributable to both terrorist organizations and agents of the State, and to propose initiatives intended to affirm peace and harmony among Peruvians.)

the other hand, it will also enable victims and Peruvian society as a whole to learn what happened, to recoup the historical memory and arrive at the truth.⁶⁹

VIII. THE LAW

A. General considerations

67. Some of the Court's earliest cases involved the practice of forced disappearance. It wrote that:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.⁷⁰

68. Since then the Court has reiterated that forced disappearance constitutes a multiple and continuing violation of a number of rights protected under the American Convention. It also presupposes a disregard of the duty to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention.⁷¹ By directly carrying out forced or involuntary disappearances or tolerating such practices, by not investigating them properly and, where appropriate, by failing to punish those responsible, the State is violating its obligation to respect the rights recognized in the American Convention and to ensure their free and full exercise.⁷²

69. As the Court has held, forced disappearance is a crime against humanity.⁷³ The Inter-American Convention on Forced Disappearance of Persons, adopted on July 9, 1994, is also premised on the principle that when it is systematic practice, forced disappearance constitutes a crime against humanity. That convention sets out the essentials that distinguish forced disappearance from other criminal behaviors such as kidnapping, unlawful detention or abuse of authority. Article II 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

⁶⁹ See The Truth and Reconciliation Commission, *Final Report*, Volume I, Introduction, where the CVR establishes the basic principles of its mandate, including the concept of "truth".

⁷⁰ IACHR, *Blake Case*, *supra*, para. 66.

⁷¹ IACHR, *Case of the 19 Merchants*, Judgment of 5 July 2004, Series C No. 109, para. 142 citing from *Bámaca Velásquez Case*, *supra*, paragraphs 128 and 129; *Blake Case*, *supra*, para. 65; and *Fairén Garbí and Solís Corrales Case*, Judgment of March 15, 1989, Series C No. 6, paragraphs 147 and 152.

⁷² IACHR, *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Series C No. 37, para. 90; *Fairén Garbí and Solís Corrales Case*, *supra*, para. 152; *Godínez Cruz Case*, *supra*, paragraphs 168-191; and *Velásquez Rodríguez Case*, *supra*, paragraphs 159-181.

⁷³ IACHR, *Case of the 19 Merchants*, *supra*, para. 142.

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.⁷⁴

70. Under Article I of the Inter-American Convention on Forced Disappearance of Persons, the States parties undertake an international obligation:

(...)

b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

(...)

d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.⁷⁵

71. The provisions reaffirm obligations to which the Peruvian State had already pledged itself when it became a State party to the American Convention. The significance of these provisions in the instant case, however, stems from the fact that they underscore the point that appropriate legislative measures must be taken to properly criminalize forced disappearance, as will be analyzed below.

72. It is important to recall that the *modus operandi* used to carry out the victim's disappearance fit into a systematic pattern of human rights violations in Peru at that time, *supra* paragraphs 27-29.

B. Violation of Article 7 of the American Convention (Right to Personal Liberty), in combination with Article 1(1) thereof

73. Article 7 of the American Convention regulates the guarantees necessary to safeguard personal liberty, and provides that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his

⁷⁴ Inter-American Convention on Forced Disappearance of Persons, adopted at the twenty-fourth regular session of the General Assembly on June 9, 1994, in Belém do Pará, Brazil; it entered into force on March 28, 1996. Article II.

⁷⁵ *Id.*, Article I, letters b and d.

arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

(...)

74. Article 7 of the American Convention guarantees the right to personal liberty and security. It thus works to curb the State's authority when depriving individuals of their freedom as part of a strategy to prevent terrorism and other forms of violence, the purpose being to ensure that detentions of persons within its jurisdiction are effected lawfully.⁷⁶ The Court has established the following in this regard:

Subparagraphs 2 and 3 of Article 7 establish limits to public authorities, explicitly forbidding both illegal and arbitrary detentions. (...) "[A]ccording to the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but also, under strict conditions, established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes that –although qualified as legal– may be considered incompatible with respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion."⁷⁷

75. In the specific case of forced disappearances, the Court has ruled that

The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty"⁷⁸

76. Subparagraphs 4, 5 and 6 of Article 7 of the American Convention require the State and third parties acting with the State's tolerance or consent to operate within these parameters, so as to avoid unlawful or arbitrary detentions and to ensure that the person deprived of his liberty has the right to defend himself.⁷⁹

77. This jurisprudence has been developed by both the Inter-American Court and the European Court of Human Rights

⁷⁶ See in this regard, IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc.5 rev. 1 corr., October 22, 2002. The means that a State can use to protect its security or that of its citizens in the fight against terrorism are not without their limits. Quite the contrary, as the Honorable Court established, "regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the State is not unlimited, nor may the State resort to any means to attain its ends." IACHR, *Neira Alegría Case*, *supra*, para. 75.

⁷⁷ IACHR, *Juan Humberto Sánchez Case*, Judgment of June 7, 2003, *supra*, para. 78, citing from the *Bámaca Velásquez Case*, *supra*, para. 139; *Durand and Ugarte Case*, *supra*, para. 85; *The "Street Children" Case (Villagrán Morales et al.)*, Judgment of November 19, 1999. Series C No. 63. para. 131; *Suárez Rosero Case*, Judgment of November 12, 1997. Series C No. 35, paragraphs 43-44; and *Gangaram Panday Case*, *supra*, para. 47. See also IACHR, *Report on Terrorism and Human Rights*, *supra*, p. 95 *et seq.*, paragraphs 118 *et seq.*

⁷⁸ IACHR, *Velásquez Rodríguez Case*, *supra*, para. 155.

⁷⁹ Cfr. IACHR, *Juan Humberto Sánchez Case*, *supra*, para. 81.

Both the Inter-American Court and the European Court have considered that the prompt judicial supervision of detentions is of particular importance in order to prevent arbitrariness. An individual who has been deprived of his freedom without any type of judicial supervision should be liberated or immediately brought before a judge, because the essential purpose of Article 7 of the Convention is to protect the liberty of the individual against interference by the State. The European Court has stated that, although the word "immediately" should be interpreted according to the special characteristics of each case, no situation, however, grave, grants the authorities the power to unduly prolong the period of detention without affecting Article 5(3) of the European Convention. That Court emphasized that failure to acknowledge the detention of an individual is a complete denial of the guarantees that must be granted and an even greater violation of the Article in question.⁸⁰

78. Santiago Fortunato Gómez Palomino was deprived of his liberty abruptly and violently, without cause and without a court order.⁸¹ The members of the Colina Group who unlawfully and arbitrarily detained the victim did not give motives or reasons for his detention and did not tell him where he was being taken, paragraphs 35 *et seq.*, *supra*.

79. The victim and his family were not allowed recourse to the proper judicial authority to determine the legality of the detention and had no way of filing a petition of *habeas corpus* as such remedies were suspended in the days following the events in question, paragraph 43 above. Given the circumstances under which he was detained, the victim's family could reasonably assume that he had been detained by agents of the State charged with fighting terrorism under the most recent provisions that the Fujimori administration had adopted at that time, in the wake of the events of April 1992. The suspension of the remedies of *habeas corpus* was a violation of Article 7(6) of the American Convention, in combination with Article 1(1) thereof, as the State has a positive duty to ensure the rights of those subject to its jurisdiction, which presupposes removing any obstacles so that they are able to enjoy the rights recognized in the Convention.⁸²

80. Therefore, the Inter-American Commission is requesting that the Honorable Court adjudge and declare that the Peruvian State violated Article 7 of the American Convention, in combination with Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino.

D. Violation of Article 5 of the American Convention (Right to Humane Treatment), in combination with Article 1(1) thereof

⁸⁰ *Id.*, para. 84, citing from Eur. Court HR, Aksoy v. Turkey. judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, para. 76; and Eur. Court H.R., Brogan and Others judgment of 29 November 1988, *Series A* no. 145-B, para. 58-59, 61-62. Cf. *Bámaca Velásquez Case*, *supra*, para. 140; *Castillo Petruzzi et al. Case*, Judgment of May 30, 1999. *Series C* No. 52, para. 108; Cf. *Bámaca Velásquez Case*, *supra*, para. 140; *The "Street Children" Case (Villagrán Morales et al.)*, *supra*, para. 135; and Cf. Eur. Court HR, Kurt v. Turkey judgment of May 25, 1998, *Reports of Judgments and Decisions* 1998 III, para. 124.

⁸¹ Article 2(24)(f) of the 1993 Peruvian Constitution provides as follows: Article 2. Every person has the right: (...) 24. To personal liberty and security. Therefore: (...) f) No one shall be detained except by written order from a judge, stating the motives, or by the judicial authorities in a case of *flagrante delicto* (...)"

⁸² Cf. IACHR, *Juan Humberto Sánchez Case*, *supra*, para. 85 citing from IACtHR, *Bámaca Velásquez Case*, *supra*, para. 194; and *The "White Van" Case (Paniagua Morales et al.)*, Judgment of March 8, 1998. *Series C* No. 37, para. 167.

81. Article 5 of the Convention provides that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.
- (...)

82. It is the jurisprudence of the Court that the right to humane treatment is violated in cases of forced disappearance, both with respect to the disappeared victim – who in the instant case is Santiago Fortunato Gómez Palomino- and with respect to his family.⁸³

83. As shown previously, at par. 35 *et seq.*, Santiago Fortunato Gómez Palomino was unlawfully and arbitrarily detained by members of the Colina Group, in an exacerbated situation of vulnerability, thereby creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, would be violated.⁸⁴

84. That real risk materialized to the victim's detriment when they burst into his home, dragged him from the room where he was sleeping, and proceeded to question him about the names of people he didn't know, and beat him in the presence of his partner Esmila Liliana Conislla Cárdenas and his cousin Mrs. María Chipana Flores. He was then overpowered, gagged and taken away to an unknown destination.

85. It is clear that the detention was carried out against a backdrop of systematic forced disappearances that made it possible to continue interrogation using brute force and torture, a method generally inflicted upon the person being interrogated in order to extract information about members of subversive groups. In the instant case, collaborator 371-MCS made a statement to the effect that Santiago Fortunato Gómez Fortunato's disappearance was the result of an operation aimed at detaining suspected members of *Sendero Luminoso*. The victim was detained because he was mistakenly believed to have been a member of that organization. According to the collaborator's statement, Santiago Fortunato Gómez Palomino was detained, questioned and forced to dig his own grave⁸⁵ before being executed.

86. No precise information is available as to the number of hours that Santiago Fortunato Gómez Paomino was held by his abductors before being killed, as the only

⁸³ See IACHR, *Bámaca Velásquez Case*, para. 160. The Honorable Court has repeatedly held that the next of kin of victims of human rights violations may, in turn, become victims themselves. Cf. IACTHR, *Juan Humberto Sánchez Case*, *supra*, para. 101 *citing, inter alia*, the *Cantoral Benavides Case*, *supra*, para. 105 and the *Castillo Páez Case, Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 59.

⁸⁴ IACTHR *Bámaca Velásquez Case*, para. 150 *citing from Cantoral Benavides Case, supra*, para. 90; *The "Street Children" Case (Villagrán Morales et al.)*, *supra*, para. 166, and also *Eur. Court H.R., Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25, para. 167.

⁸⁵ See IACHR, *Aloeboetoe et al. Case, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 51, referring to the torment that a person forced to dig his own grave endures and that must be considered when establishing moral damages to compensate for a victim's pain and suffering.

source in that regard is the statement made by collaborator 371-MCS. However, according to the standards of international law a brief period of detention is enough for it to constitute an infringement of the victim's mental and moral integrity. The Court has also stated that when said circumstances occur, it is possible to infer, even if there is no additional evidence in this regard, that the victim's treatment during his isolation was inhuman, degrading, and extremely aggressive.⁸⁶

87. As for the relatives of Santiago Fortunato Gómez Palomino, the Court has recognized that forced disappearance causes relatives suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate. The violation of the relatives' physical and mental integrity is a direct consequence of the forced disappearance.⁸⁷

88. The physical and moral integrity of the victim's mother, Victoria Margarita Palomino Buitrón, and that of his partner at the time of the events in question, Esmila Liliana Conislla Cárdenas, were affected as a direct consequence of the disappearance that claimed Santiago Fortunato Gómez Palomino as its victim. Once she learned what had happened, Victoria Margarita Palomino Buitrón made the rounds of the police stations, jails, hospitals and funeral homes in search of her son. She filed the proper complaints with the authorities, went to the Attorney General's Office in 1993 and again since 2001, and was present for the excavation proceedings conducted at the beach in Chorrillos, with the expectation that her son's body would be found, but to no avail. Esmila Liliana Conislla Cárdenas spent the two years following Santiago Fortunato Gómez Palomino's disappearance, at his mother's home. Her mother providing Santiago's mother consolation in her pain and in her search.⁸⁸

89. Esmila Liliana Conislla Cárdenas was also the victim of inhumane treatment on July 9, 1992, when Santiago Fortunato Gómez Palomino was detained. She was a witness to her partner's beating and was threatened with forced disappearance; her baby was snatched from her arms and she was bound, gagged and her face covered with a blanket, *supra* 35-36. This cruel treatment was a violation of Article 5 of the Convention.

90. The Inter-American Commission is therefore requesting that the Honorable Court adjudge and declare that the Peruvian State violated Article 5(1) and 5(2) of the American Convention, in combination with Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino, his mother Mrs. Victoria Margarita Palomino Buitrón, and his partner at the time of these events, Esmila Liliana Conislla Cárdenas.

E. Violation of Article 4 of the American Convention (Right to Life) in combination with Article 1(1) thereof

⁸⁶ IACHR *Juan Humberto Sánchez Case*, para. 98.

⁸⁷ IACHR, *Case of the 19 Merchants*, *supra*, paragraphs 210; *Juan Humberto Sánchez Case*, para. 101-102; *Bámaca Velásquez Case*, *supra*, para. 160-166 citing from the *Blake Case*, *supra*, para. 114; Eur. Court HR, *Kurt v. Turkey*, Judgment of 25 May 1998, para. 124.

⁸⁸ See Appendix 12, answer to question 25.

91. Article 4(1) of the American Convention provides as follows:

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.
(...)

92. The Court has held that

"(...) the right to life plays a fundamental role in the American Convention because it is a prior condition for realization of the other rights.⁸⁹ When the right to life is not respected, all the other rights lack meaning. The States have the obligation to ensure the creation of such conditions as may be required to avoid violations to this inalienable right and, specifically, the duty of avoiding attempts against it by the agents of the State.⁹⁰ Compliance with Article 4 of the American Convention, in combination with Article 1(1) of that same Convention, requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but also that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation)⁹¹, under their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.⁹² This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those who must protect security, be these its police forces or its armed forces.⁹³ Therefore, the States must adopt all necessary measures, not only to prevent, try, and punish deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents.⁹⁴

(...) forced disappearance frequently involves 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 the impunity of those responsible, which represents a brutal violation of the right to life recognized in Article 4 of the Convention.⁹⁵

⁸⁹ IACHR, *Case of the 19 Merchants*, *supra*, para. 153 citing from *Myrna Mack Chang Case*, *supra*, para. 152; *Juan Humberto Sánchez Case*, *supra*, para. 110; and the "Street Children" Case (*Villagrán Morales et al.*), *supra*, para. 144.

⁹⁰ IACHR, *Case of the 19 Merchants*, *supra*, para. 153 citing from the United Nations Human Rights Committee, *General Comment 6/1982*, para. 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 6 (1994); United Nations Human Rights Committee, *General Comment 14/1984*, para. 1 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 en 18 (1994); *Cf. Myrna Mack Chang Case*, *supra*, para. 152; *Juan Humberto Sánchez Case*, *supra*, para. 110; and the "Street Children" Case (*Villagrán Morales et al.*), *supra*, para. 144.

⁹¹ IACHR, *Case of the 19 Merchants*, *supra*, para. 153 citing from *Myrna Mack Chang*, *supra*, para. 153; *Bulacio Case*, *supra*, para. 111; and *Juan Humberto Sánchez Case*, *supra*, para. 110.

⁹² *Id.*

⁹³ IACHR, *Case of the 19 Merchants*, *supra*, para. 153 citing from U.N.Doc.CCPR/C/SR.443, para. 55.

⁹⁴ IACHR, *Case of the 19 Merchants*, *supra*, para. 153 citing from *Myrna Mack Chang Case*, *supra*, para. 153; *Juan Humberto Sánchez Case*, *supra*, para. 110; *Bámaca Velásquez Case*, *supra*, para. 172; United Nations Human Rights Committee, *General Comment No. 6 (Sixteenth session, 1982)*, para. 3, *supra*; and United Nations Human Rights Committee, *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N.Doc. Supp. No. 40 (A/37/40) at 137 (1982), p. 137.

⁹⁵ IACHR, *Case of the 19 Merchants*, *supra*, para. 154 citing from *Bámaca Velásquez Case*, *supra*, para. 130; *Castillo Páez Case*, *supra*, para. 73; and *Godínez Cruz Case*, *supra*, para. 165.

93. Santiago Fortunato Gómez Palomino was detained on July 9, 1992, and to this day his whereabouts are unknown. Under the case law and doctrine of the inter-American system for the protection of human rights, there is a presumption of death even though his body was never found, *supra* paragraph 62 *et seq.*

94. The investigations conducted since 2001 have compiled indicia pointing to the fact that the victim was assassinated by members of the Colonia Group, attached to the State Intelligence Service. The Group was implementing a State policy used to search for, question and execute members of subversive groups. The investigations have also gotten information suggesting where the body of Santiago Fortunato Gómez Palomino might be buried, *supra* paragraph 49.

95. Given the circumstances under which the victim was detained, the failure to investigate the facts promptly, the amount of time that has passed without his whereabouts being established, and the existence of a practice of forced disappearances promoted and tolerated by the Peruvian State at the time of these events, there is a valid presumption that Santiago Fortunato Gómez Palomino was the victim of an extra-legal execution committed by government agents.⁹⁶ The Peruvian State thus violated Article 4 of the American Convention, in combination with Article 1(1) thereof, by failing to respect Santiago Fortunato Gómez Palomino's right to life through his forced disappearance by agents of the State.

96. Secondly, the Peruvian State also violated Article 4 of the American Convention, in combination with Article 1(1) thereof, by failing to comply with its obligation to ensure the right to life through the use of effective measures of prevention.

97. Peru breached its obligation of prevention⁹⁷ since the petition of *habeas corpus*, which is the one of the proper remedies for the protection of the right to life, was ineffective in that it was suspended at the time of these events, *supra* paragraph 43. By suspending the *habeas corpus* remedy, the State violated its obligation to adopt reasonable measures to prevent violation of the human rights protected under the American Convention.⁹⁸

98. The Commission further observes that the State would have been in breach of its obligation to prevent the violation of the right to life even if the perpetrators of the forced disappearance had not been its own agents. By failing to provide effective access to the remedy of *habeas corpus*, at a time when the systematic pattern of forced disappearances was widespread, the Peruvian State failed to exercise due diligence to

⁹⁶ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 109; *Bámaca Velásquez Case*, *supra*, para. 173; *Castillo Páez Case*, *supra*, paragraphs 71-72.

⁹⁷ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 110; *Case of the 19 Merchants vs. Colombia*, *supra*, para. 153; *Myrna Mack Chang Case*, *supra*, para. 153; *Velásquez Rodríguez Case*, *supra*, para. 166.

⁹⁸ IACHR *Velásquez Rodríguez Case*, *supra*, para. 174; *Godínez Cruz Case*, *supra*, para. 184.

prevent the violation of the victim's right to life, even if the perpetrators had not been members of the police or armed forces.⁹⁹

99. The Commission is asking the Honorable Court to adjudge and declare that, by not creating a constitutional and legal structure that would enable effective prevention of violations of the right to life, the Peruvian State violated Article 4 of the American Convention, in combination with Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino.

100. Thirdly, the Peruvian State failed to fulfill its obligation to ensure Santiago Fortunato Gómez Palomino's right to life since he died while in the State's custody after being detained by its agents. The Court has established the following in this regard:

As guarantor of this right, the State must prevent those situations –such as the current *sub judice* one– that might lead, by action or omission, to suppression of inviolability of the right to life. In this regard, if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence, because in its role as guarantor the State has the responsibility both of ensuring the rights of the individual under its custody and of providing information and evidence pertaining to what happened to the detainee.¹⁰⁰

101. As guarantor, the State must provide explanations as to the victim's whereabouts and conduct a prompt investigation into the facts.¹⁰¹ Since the Court's earliest case law on the subject of forced disappearance, it found that:

The (...) obligation of the States Parties is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.¹⁰²

⁹⁹ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 142; *Bámaca Velásquez Case*, *supra*, para. 210.

¹⁰⁰ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 111, citing from Eur. Court HR, *Timurtas v. Turkey* judgment of 13 June 2000, *Reports of Judgments and Decisions* 2000-VI, para. 82; Eur. Court HR, *Salman v. Turkey* judgment of 27 June 2000, *Reports of Judgments and Decisions* 2000-VII, para. 99; *Las Palmeras Case*, Judgment of December 6, 2001, Series C No. 90, para. 42.b); the *Mayagna (Sumo) Awas Tingni Community Case*, *supra*, para. 99; the *Cantoral Benavides Case*, *supra*, para. 55; the *Durand and Ugarte Case*, *supra*, para. 65; the *Gangaram Panday Case*, *supra*, para. 49; the *Godínez Cruz Case*, *supra*, para. 141; the *Velásquez Rodríguez Case*, *supra*, para. 135; the *Bámaca Velásquez Case*, *supra*, paragraphs 152-153. Citing extensive jurisprudence of the European Court: Court HR, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, para. 61; Eur. Court H.R., *Ribitsch v. Austria*, judgment of 4 December 1995, Series A, no. 336, para. 34 and Eur. Court H.R., *Case of Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, paragraphs 108-111.

¹⁰¹ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 112 (quotation marks omitted).

¹⁰² IACHR, *Velásquez Rodríguez Case*, *supra*, para. 166.

102. If it fails to investigate, prosecute and punish, a State is not in compliance with its obligation to ensure the free and full exercise of the human rights¹⁰³ of the victims and their relatives and of society's right to know the truth.¹⁰⁴ Failure to investigate and the impunity that results is particularly egregious in cases involving violations of the right to life, committed within the context of a pattern of systematic human rights violations, as it creates a climate conducive to chronic repetition of such violations.¹⁰⁵ By failing to properly investigate the disappearance of Santiago Fortunato Gómez Palomino when it was guarantor of his rights, the Peruvian State incurred responsibility for violation of Article 4 of the American Convention, in combination with Article 1(1) thereof.

103. This interpretation is consistent with the Court's finding in the *Las Palmeras Case*, where it held that the failure to conduct a serious investigation could itself be a violation of the right to life.¹⁰⁶ That being the case, and as the evidence shows, the State did not conduct any objective and serious investigation when it learned of Santiago Fortunato Gómez Palomino's disappearance.

104. The Commission is, therefore, requesting that the Court adjudge and declare that Peru failed to comply with its obligation to respect Santiago Fortunato Gómez Palomino's right to life, inasmuch as his forced disappearance was imputable to its own agents. The State also violated the victim's right to life when it suspended the remedy of *habeas corpus*. It violated its obligation to ensure the victim's right to life by not investigating the facts promptly, despite being the guarantor of that right, and by not prosecuting and punishing those responsible. All this in violation of Article 4(1) of the American Convention, in combination with Article 1(1), to the detriment of Santiago Fortunato Gómez Palomino.

F. Violation of Article 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention in combination with Article 1(1)

105. Article 8 (1) of the Convention provides that:

¹⁰³ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 134, citing from, *inter alia*, the *Bámaca Velásquez Case*, *supra*, para. 129; *Godínez Cruz Case*, *supra*, paragraphs 168-191; and *Velásquez Rodríguez Case*, *supra*, paragraphs 159-181. See also IACHR, *Resolution 1/03 titled "On Trial for International Crimes"*, October 24, 2003, in IACHR, Annual Report of the Inter-American Commission on Human Rights 2003, December 29, 2002, Appendix I.

¹⁰⁴ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 134 citing from IACtHR *Trujillo Oroza Case, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, paragraphs 99-101 and 109; and *Bámaca Velásquez Case, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, paragraphs 74-77.

¹⁰⁵ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 132; *Myrna Mack Chang Case*, *supra*, para. 156.

¹⁰⁶ IACHR, *Las Palmeras Case*, Judgment of December 6, 2001, Series C No. 90, para. 42 ("While in some cases, the failure to investigate may be construed as an attempt to protect the authors of the crime of murder, this reasoning cannot be postulated as a generic rule across the board. Apart from the question of the legitimacy of a rule such as the one postulated by the Commission, the fact is that it would be applicable only if no serious investigation had been conducted.") See in this regard the *jurisprudence constante* of the European Court, *inter alia*, *Hugo Jordan vs. The United Kingdom*, Judgment of March 4, 2001, paragraphs 142-145; and *Anchova et al. vs. Bulgaria*, Judgment of February 26, 2004, para. 141, cited by Judge Medina Quiroga in her partially dissenting opinion in the *Case of the 19 Merchants*, *supra*, and by the Inter-American Court in the *Case of the Gómez Paquiyauri Brothers*, *supra*, footnote 113, in the section on the right to life, paragraphs 123 *et seq.*

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.

(...)

106. Article 25 of the American Convention provides that:

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.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

107. As the Court has previously held, Article 8 of the American Convention "does not recognize any judicial guarantees, strictly speaking. Article 8 does not contain a specific judicial remedy, but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees under the Convention."¹⁰⁷ Article 8 recognizes what is known in international human rights law as the right to due process which, like the provisions of articles 7(6) and 25, cannot be suspended in states of emergency.¹⁰⁸

108. Article 25(1) of the American Convention, for its part, is a general rule that applies to institutions like *amparo* or *tutela*, which must be swift and short proceedings to protect the basic rights. As the Court has established, the paramount objective of the international protection of human rights is to protect the individual against the abusive exercise of public power. Absent effective domestic remedies, the victim is left defenseless. Article 25(1) of the American Convention establishes, in broad terms, that

the obligation of the States to provide to all persons within their jurisdiction an effective judicial remedy to violations of their fundamental rights. It provides, moreover, for the

¹⁰⁷ IACHR, *Constitutional Court Case*, Judgment of January 31, 2001, Series C No. 71, para. 69 citing from *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

¹⁰⁸ *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87, *supra*, para. 30.

application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution or laws.¹⁰⁹

The lack of an effective recourse against violations of Convention-protected rights is in itself a violation.¹¹⁰

109. In the instant case, Peru has violated the rights set forth in articles 8 and 25 of the American Convention, in combination with Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino and his relatives, in two respects: first, by the ineffectiveness of the remedy of *habeas corpus* at the time of the events in this case; and second, by not having investigated, prosecuted and punished, within a reasonable period of time, those responsible for the victim's disappearance.

1. *Inefficacy of the petition of habeas corpus*

110. The Court has established that *habeas corpus* is both important and appropriate

(...)among the indispensable guarantees of fair trial, *habeas corpus* is the suitable means to ensure liberty, to control respect for life and the right to humane treatment, and to impede their disappearance or non-determination of their place of detention, as well as to protect the individual against torture or other cruel, inhuman or degrading treatment or punishment.¹¹¹

111. As described above at paragraph 35 *et seq.*, on July 9, 1992 Santiago Fortunato Gómez Palomino was deprived of his liberty unlawfully and arbitrarily by members of the Colina Group. Shortly thereafter, on August 7, 1992, the Government issued Decree Law No. 25659, which entered into force on August 13, 1992. That decree law criminalized treason and introduced certain measures in connection with the investigation and prosecution of the crime of terrorism. One such measure was to declare that no one being investigated or prosecuted for the crime of terrorism or treason could exercise the remedy of *habeas corpus*. The decree law read as follows:

At no time during the police investigation or trial shall those detained for, suspected of or on trial for the crime of terrorism classified in Decree Law No. 25,475 be permitted to file remedies seeking judicial guarantees, nor may such actions be filed against the provisions of this Decree Law.¹¹²

¹⁰⁹ IACHR, *Constitutional Court Case*, *supra*, para. 89 citing from *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9, *supra*, para. 23.

¹¹⁰ *Id.*, citing from *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-87, *supra*, para. 24.

¹¹¹ IACHR, *Juan Humberto Sánchez Case*, *supra*, para. 122 citing from the *Bámaca Velásquez Case*, *supra*, para. 192; *Cantoral Benavides Case*, *supra*, para. 165; and *Durand and Ugarte Case*, *supra*, para. 103.

¹¹² Decree Law No. 25659, *supra*, Article 6.

112. That absolute suspension remained in place for more than 15 months, until November 25, 1993, when Law 26248 allowing petitions of *habeas corpus* took effect.¹¹³ However, the procedural rules stipulating the conditions under which *habeas corpus* relief could be sought were so stringent as to render it ineffective:

Article 6.- Actions of *habeas corpus* may be filed under the conditions stipulated in Article 12 of Law No. 23,506, on behalf of persons being held for, accused of, or on trial for crimes of treason or terrorism, provided the following procedures are observed:

- 1) The special criminal law judge for terrorism cases is competent to take cognizance of the action of *habeas corpus*; absent that, the ordinary criminal law judge shall be competent.
- 2) The action can be brought by the interested party or by any other person on his behalf. In the latter case, the special judge must first takes steps to establish the identity of the person filing the action.
- 3) When more than one action has been filed on behalf of the same person, the judge who took cognizance of the first action will have jurisdiction to hear the others.
- 4) Actions of *habeas corpus* built on the same facts or cases are not admissible, nor may any actions be filed once the trial proceedings are underway or a verdict has been reached.
- 5) Once the action has been admitted, the Judge shall order immediate notification of the Public Prosecutor in charge of terrorism cases and shall proceed in accordance with the provisions of Laws Nos. 23506 and 25398.
- 6) Any appeal shall be heard by the Superior Criminal Chamber sitting at the time.
- 7) Magistrates and officers of the court may neither recuse themselves nor be excused, except in the specific cases established by law.¹¹⁴

113. In effect, the amendment provided that the petition of *habeas corpus* was to be filed through the Criminal Court Judges Specializing in Terrorism. Under Article 15 of Decree Law No. 25475, their identity was secret. The Court has already had occasion to address violations of Article 8 committed in proceedings conducted in the presence of "faceless" judges.¹¹⁵ Further, petitions of *habeas corpus* were not permissible in trials already underway or decided.

114. Santiago Fortunato Gómez Palomino was unable to file any remedy to demonstrate the unlawfulness of his detention, to find out the reasons for said detention, to appoint a legal representative, or to exercise his right to defense, as his detention was illegal and arbitrary, he was taken to an unknown place where he was interrogated,

¹¹³ Law No. 26248, "Amendment of Decree Law No. 25659, in reference to the admissibility of petitions of *habeas corpus* in cases involving crimes of terrorism and treason," published in the Official Gazette of November 25, 1993, Article 2 that amends Article 6 of Decree Law No. 25659.

¹¹⁴ *Idem*.

¹¹⁵ See IACHR, *Loayza Tamayo Case*, Judgment of September 17, 1997. Series C No. 33; *Castillo Petruzzi et al. Case*, *supra*; *Cantoral Benavides Case*, *supra*.

tortured, and presumably executed.¹¹⁶ His mother, Victoria Margarita Palomino Buitrón, and the representatives of APRODEH were also powerless to file a petition of *habeas corpus* owing to the above-described suspension. The latter was applied because they had well-founded reason to presume that the victim had been detained by representatives of the State for purported ties to the Sendero Luminoso. Once *habeas corpus* was restored, the restrictions imposed to invoke it were so strict as to render it ineffective.

115. With the suspension of *habeas corpus* and its subsequent ineffectual reinstatement the State failed its obligation to prevent violations of Convention-protected rights, and was thus derelict in its obligation to ensure the free and full exercise of those rights, as provided under Article 1(1) of the American Convention. The Commission is therefore requesting that the Court adjudge and declare that the Peruvian State violated Article 25 of the American Convention, in combination with Article 1(1) thereof.

2. *The ineffectiveness of the domestic investigation and violation of the principle of reasonable time*

116. To determine whether, in a given case, the State has complied with the judicial guarantees required under the Convention, the respective domestic proceedings have to be examined.¹¹⁷ This means that the investigation carried out must be scrutinized, as must the manner in which the evidence was gathered and produced, the proceedings conducted and the rulings delivered at the various levels within the judiciary. This is the natural scenario in which these guarantees will materialize in a State governed by the rule of law.

117. As for the investigative work and court proceedings conducted to identify those responsible for the forced disappearance of Mr. Santiago Fortunato Gómez Palomino, his fate and his whereabouts, it is important to note that on August 3, 1992, shortly after his disappearance, the victim's mother and the then Secretary General of APRODEH filed complaints, one with the Attorney General of the Nation and another with the Superior Prosecutor for Human Rights, to speed up the respective investigations. Mrs. Margarita Palomino Buitrón was summoned to elaborate upon her complain on June 11, 1993, more than one year after her son's disappearance and the corresponding complaint. More than five years later, in August 1998, the State informed the IACHR that on an unspecified date the Police authorities had gone to Santiago Fortunato's place of work to inquire about his whereabouts. The communication makes no reference to any other investigative measures, such as statements taken from eyewitnesses to the events and other such procedures.

118. After nine years of investigative inertia that began in 1992, around mid 2001 another inquiry into these events was initiated, triggered by a statement made by a member of the Colina Group. In mid 2002 and early 2003, the victim's relatives and other

¹¹⁶ Cf. IACHR *Juan Humberto Sánchez Case*, *supra*, para. 125.

¹¹⁷ IACHR *Juan Humberto Sánchez Case*, *supra*, para. 120, citing from the *Bámaca Velásquez Case*, *supra*, para. 188 and the *"Street Children" Case (Villagrán Morales et al.)*, *supra*, para. 222.

witnesses testified about the events. Despite those statements and the confession made by one of the perpetrators of the forced disappearance, admitting to the arbitrary detention, the interrogation, and way in which the victim was forced to dig his own grave, the way he was killed and the author of that crime, as well as the burial of his remains on a beach not far from where he lived, the investigation is still in its preliminary stage.

119. More than twelve years have passed, yet the victim's family has no knowledge of what happened to Santiago Fortunato Gómez Palomino, where his remains are, who the parties responsible for his forced disappearance are, what punishment they received and what compensation they are owed via the courts. Their most fundamental Convention-protected rights have been violated, yet the impunity persists. The Court has defined impunity as follows:

"the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human right violations, and total defenselessness of victims and their relatives"¹¹⁸.

120. Time and time again the Honorable Court has held that for a State to be in compliance with the juridical protection and guarantees that it is obligated to ensure under the Convention, it is not enough for the remedies to exist formally. This obligation requires that, in order to be considered effective, the remedies –in this case the respective criminal procedure- must work and provide results or redress to the human rights violations.¹¹⁹ Time and time again the Court has held that relatives of the victim are entitled to know the truth of what happened and to know the identity of the State agents responsible for the facts; society, too, has a right to know the truth.¹²⁰

121. Secondly, as the Court has observed, the purpose of access to the courts is not fully served by merely holding internal proceedings; instead, a decision within a reasonable period of time must be assured.¹²¹

¹¹⁸ IACHR. *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 148; *Myrna Mack Chang Case*, *supra*, paragraphs 156 and 210; *Juan Humberto Sánchez Case*, *supra*, para. 143; *Bámaca Velásquez Case*, *supra*, para. 211; and the "*White Van*" *Case (Paniagua Morales et al.)*, para. 173. See also the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Appendix to the *Final Report of the Special Rapporteur on the question of the impunity of perpetrators of human rights violations (civil and political)*. E/CN.4/Sub.2/1997/20/Rev.1 Presented to the Commission on Human Rights in 1998. ("A. Impunity "Impunity" means the impossibility, *de jure* or *de facto*, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.")

¹¹⁹ IACHR *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 229 citing from the *Myrna Mack Chang Case*, *supra* note 5, para. 273; *Trujillo Oroza Case. Reparations*, *supra* note 116, para. 100; and the *Cantoral Benavides Case. Reparations*, *supra* note 108, para. 69; see also IACTHR *Juan Humberto Sánchez Case*, *supra*, para. 121.

¹²⁰ IACHR *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 230 citing from, *inter alia*, the *Myrna Mack Chang Case*, *supra*, para. 274; the *Trujillo Oroza Case. Reparations*, *supra*, para. 114; and the *Bámaca Velásquez Case. Reparations*, *supra*, para. 76.

¹²¹ IACHR, *Case of the 19 Merchants*, *supra*, para. 188 citing from the *Myrna Mack Chang Case*, *supra*, para. 209; *Bulacio Case*, *supra*, para. 114; and the *Hilaire, Constantine and Benjamin et al. Case*, *supra*, paragraphs 142 to 145.

122. To determine whether internal proceedings have been conducted within "reasonable time" the analysis must consider the process as a whole, right through delivery of the definitive judgment. This is particularly so in criminal cases, where the process includes any appeals filed.¹²² Unfortunately, in the instant case the analysis cannot go that far, since twelve years after the fact, the criminal trial proceedings have not even gotten underway.

123. The Court has established that three factors have to be taken into account to determine whether the time the process took was reasonable: a) the complexity of the matter; b) the judicial activity of the interested party; and c) the behavior of the judicial authorities.¹²³

124. In its recent judgment in the *Case of the 19 Merchants*, the Court pointed out that it is up to the State to explain and prove the reason why the time needed is greater than what would in principle be considered reasonable to deliver a definitive judgment in a particular case, taking the above three factors into account.¹²⁴ It is important to note that in cases such as the present case, the authorities must act at their own initiative and press the investigation forward, without allowing that inquiry to depend upon the initiative of the victim's family.¹²⁵

125. The forced-disappearance complaint filed by the victim's mother required that the police authorities use every means possible to conduct an immediate search and make all urgent and necessary inquiries. This is not what happened. The police only inquired at his work place and, when they turned up nothing, concluded that this was a voluntary disappearance. Although the investigation of crimes of this nature is a complex undertaking, the State was not diligent about its duty to properly investigate the circumstances of the crime from the very first moment.

126. The case was resurrected on the basis of a 2001 confession made by Julio Chuqui Aguirre, a member of the Colina Group. However, yet again, the case has not yet gone to trial, and no member of that lawless group or any of the officials who masterminded and organized the group and the crimes it committed in the instant case has been named as a suspect, much less indicted. The Office of the Attorney General delayed the excavation work to find the remains by failing to grant the necessary permission to the team of Peruvian anthropologists. The replacement of the incumbent Prosecutor for Human Rights caused further delays. These factors indicate how, after so many years, the State, through its various competent organs, has yet failed to undertake a serious,

¹²² IACHR, *Case of the 19 Merchants*, *supra*, para. 189, citing from the *Juan Humberto Sánchez Case*, *supra*, para. 120; the *Hilaire, Constantine and Benjamin et al. Case*, *supra*; and the *Suárez Rosero Case*. Judgment of November 12, 1997. Series C No. 35, para. 71.

¹²³ IACHR, *Case of the 19 Merchants*, *supra*, para. 190, citing from the *Hilaire, Constantine and Benjamin et al. Case*, *supra*, para. 143; the *Suárez Rosero Case*, *supra*, para. 72; and the *Genie Lacayo Case*, *supra*, para. 77. See also, European Court of Human Rights, *Motta v. Italy*. Judgment of February 19, 1991, Series A No. 195-A, para. 30; European Court of Human Rights, *Ruiz-Mateos v. Spain*. Judgment of June 23, 1993, Series A No. 262, para. 30.

¹²⁴ IACHR, *Case of the 19 Merchants*, *supra*, para. 191.

¹²⁵ IACHR, *Juan Humberto Sánchez Case*, *supra*, para. 132.

impartial and effective investigation, even though new and important evidence has come to light that could move the criminal inquiry forward with due speed.

127. More than twelve years have passed since the forced disappearance of Santiago Fortunato Gómez Palomino, yet the prosecution of the case is still in the stage of a preliminary criminal investigation, and the Peruvian State has still not named those responsible for the facts or made reparations of any kind to his relatives.

128. For all the foregoing reasons, the IACHR is asking the Court to adjudge and declare that the Peruvian State violated, to the detriment of Santiago Fortunato Gómez Palomino and his family, articles 8 (1) and 25 of the American Convention, in combination with Article 1(1) thereof.

G. Violation of Article 2 of the American Convention (Domestic Legal Effects)

129. Article 2 of the American Convention is as follows:

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

130. The Inter-American Court has established the following with regard to Article 2:

(...)[r]egarding people's law, a customary rule prescribes that a State, which has entered into an international agreement, must introduce in its national law the necessary assumed modifications to ensure the execution of obligations assumed. This rule is universally valid and has been considered by the jurisprudence as an evident principle ("principe allant de soi"; *Echange des populations grecques et turques, avis consultatif*, 1925, C.P.J.I., Series B. No. 10, p. 20). In this sequence of ideas, the American Convention states the obligation of every State Party to adapt its national law to dispositions of said Convention, to guarantee the rights recognized therein.¹²⁶

131. The obligation provided for in Article 2 of the Convention has several aspects:

(...) the general duty set forth in Article 2 of the American Convention implies the adoption of measures on two fronts. On the one hand, the suppression of rules and practices of any kind that entail the violation of the guarantees set forth in the Convention. On the other, the issuance of rules and the development of practices leading to the effective observance of said guarantees.¹²⁷

¹²⁶ IACHR, *Durand and Ugarte Case*, *supra*, para. 136 citing from the *Garrido and Baigorria Case. Reparations*. Judgment of August 27, 1998. Series C No. 39, para. 68.

¹²⁷ IACHR, *Cantoral Benavides Case*, *supra*, para. 178 citing from the *Durand and Ugarte Case*, *supra*, para. 137 and the *Castillo Petruzzi et al. Case*, *supra*, para. 207. Cf. IACtHR, *Certain attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 26. See also IACtHR, *Baena Ricardo et al. Case*, Judgment of February 2, 2001, para. 182.

132. To be in compliance with Article 2 of the American Convention, therefore, the State must adopt domestic measures on two fronts: it must put an end to laws and practices of any kind that thwart the guarantees protected under the American Convention; second, it must enact new laws and develop new practices that ensure effective observance of those guarantees.¹²⁸ Article I(d) of the Inter-American Convention on Forced Disappearance of Persons contains a similar provision, *supra* paragraphs 69-70.

133. Article II of the Inter-American Convention on Forced Disappearance of Persons defines forced disappearance for purposes of that Convention:

(...) 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.

134. As described at paragraphs 31-33 *supra*, forced disappearance was first defined as a crime in Peru in the 1991 Penal Code. But the relevant provision of the Penal Code was repealed on May 6, 1992, and not reintroduced until July 2, 1992, under Decree Law No. 25592. That definition of the crime of forced disappearance is the one still in effect to this day, and was re-introduced into the Penal Code under Law No. 26,926 of January 30, 1998. Consequently, Article 320 of the Penal Code now reads as follows:

Article 320. DISAPPEARANCE PERPETRATED OR ORDERED BY A PUBLIC OFFICIAL. Any public official or civil servant who deprives someone of his freedom by ordering or carrying out actions that result in that individual's duly proven disappearance, shall be imprisoned for no less than fifteen years and disqualified from the exercise of his rights as a citizen, in accordance with Article 36, paragraphs 1 and 2 of the Penal Code.¹²⁹

135. One element that does not appear in the definition given in Article II of the Inter-American Convention on Forced Disappearance of Persons is any reference to a "duly proven" disappearance ("desaparición debidamente comprobada"), which the provision now in force in Peru includes as part of the definition of what constitutes forced disappearance. This qualifier is an oddity in definitions of crime and causes confusion when, at the appointed time in the criminal proceeding –the start of the court inquiry, preventive detention, indictment– a determination has to be as to what crime the suspect's behavior fits, or when the judge has to decide whether the accused is guilty of a given crime. It also aggravates the situation of the victim's relatives, who do not have the means or the obligation to investigate the facts on their own, determine how the events

¹²⁸ IACHR "*Bulacio*" Case, Judgment of September 18, 2003. para. 143. *Five Pensioners Case*, Judgment of February 28, 2003. Series C No. 98.; *Cantos Case*, Judgment of November 28, 2002. Series C No. 97, para. 61; and the *Hilaire, Constantine and Benjamin et al. Case*, Judgment of June 21, 2002. Series C No. 94, para. 113.

¹²⁹ Decree Law No. 635 of April 3, 1991, published April 8, 1991, and amended by Law No. 26926 of February 21, 1998.

occurred, or identify the responsible parties as prerequisites for setting the State's jurisdictional apparatus in motion.

136. Consequently, the phrase "duly proven" in the definition of the crime of forced disappearance now in force in Peru makes it very difficult to find conduct that fits the crime. This is because the definition of the crime requires that the evidence be assessed before the case can go to trial and punishment can be established. Compounding this problem is the fact that when these crimes are committed, typically no trace or evidence of the disappearance is left behind.¹³⁰

137. Secondly, the active subjects of the conduct criminalized in Article 320 must be "public officials or civil servants." This definition precludes those operating with the support or acquiescence of the State, such as paramilitary, para-police or vigilantes functioning with the complicity of State agents. This is a clear contradiction of the definition contained in the Inter-American Convention on Forced Disappearance of Persons, whose scope is not confined to public officials or civil servants. To be compatible with international law,¹³¹ Article 320 must be amended so that the active subjects include both State and non-State agents. The obligation to introduce that amendment is covered under Article 2 of the American Convention and Article I(d) of the Inter-American Convention on Forced Disappearance of Persons.

138. Based on the foregoing considerations, the Commission is asking the Honorable Court to adjudge and declare that by adopting Article 320 of the Penal Code now in force and failing to amend it, the Peruvian State failed to take adequate domestic legislative measures to give effect to the rights protected under the Convention and

¹³⁰ *Informe sobre La Desaparición Forzada en el Perú* [Report on Forced Disappearance in Peru], Office of the Ombudsman and the *Asociación Nacional de Familiares de Secuestrados, Detenidos y Desaparecidos en Zonas en Estado de Emergencia*-ANFASEP, found at web site <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB64/ombudsmanreport.pdf> ["The added qualifier requiring that the disappearance be "duly proven"-which has no precedent in international legislation- ought to be understood to mean exhaustion of the police and administrative procedures commonly used to locate the whereabouts of any missing person for purposes of naming a temporary guardian (Article 47, Civil Code). Otherwise, it would saddle the person filing the complaint with an utterly absurd burden of probatory activity that would be required before any action could be taken; absurd because the practice is clandestine by its very nature. This requirement could even be construed as a kind of presumption that the person is indictable and can be punished; the effect would be to allow certain practices to go unpunished. Having said this, it is obvious that such a requirement has no reasonable basis in criminal law or policy."] The updated 2002 version is available at the Ombudsman Office's website, Ombudsman's Report No. 55: Forced Disappearance in Peru (1980-1996), available at <http://www.ombudsman.gob.pe/modules/Downloads/Informes/desapar/informe55-1.pdf>. See also Report of the National Coordinator for Human Rights for 1998 and 1999, which recommends that Article 320 of the Penal Code be amended. It is available at www.cnddhh.org.pe.

¹³¹ See, in this regard, the Rome Statute of the International Criminal Court. Its Article 7.2.i defines 'enforced disappearance' for purposes of the Statute: "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." The text of the Rome Statute was published as document A/CONF.183/9, 17 July 1998 and amended by the procès-verbaux of November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001, and January 16, 2002. The Statute entered into force on July 1, 2002. Peru is a State party to the Statute. See Legislative Resolution No. 27517, approving the "Rome Statute of the International Criminal Court," September 16, 2001. See also the Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, approved by the United Nations General Assembly in its resolution 471/133 of December 18, 1992.

violated the general obligation set forth in Article 2 of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons.

H. Noncompliance with the obligation set forth in Article 1(1) of the American Convention (Obligation to Respect Rights)

139. Article 1(1) of the Convention provides that

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

140. By its violation of the rights protected under articles 7, 5, 4, 25 and 8 of the American Convention, the State violated its obligation to respect the rights and freedoms recognized therein and to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms.¹³² The Peruvian State thus violated its obligation to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.

IX. REPARATIONS AND COSTS

141. Given the facts alleged in the present application and the *jurisprudence constante* of the Inter-American Court, which holds "that it is a principle of international law that all violations to an international obligation that have caused harm generate an obligation to adequately redress said harm,"¹³³ the IACHR is presenting to the Court its position on the reparations and costs that the Peruvian State must pay as a result of its responsibility in the violations committed against Santiago Fortunato Gómez Palomino, his mother Victoria Margarita Palomino Buitrón, his partner at the time of the events, Esmila Liliana Conislla Cárdenas, and his other next of kin.

142. The Inter-American Commission is asking the Court to order the State to make compensation for the pecuniary and non-pecuniary damages caused to Santiago Fortunato Gómez Palomino and the relatives of the victims, in the terms set forth below. The Inter-American Commission is also asking the Court to order the State to pay the legal costs and fees that the victims and their relatives incurred in the domestic judicial proceedings, and the costs and expenses incurred in bringing the present case before the inter-American system.

A. Obligation to make reparations and measures of reparation

¹³² IACHR, *Juan Humberto Sánchez Case*, *supra*, para. 142; *Bámaca Velásquez Case*, *supra*, para. 210; *Godínez Cruz Case*, *supra*, paragraphs 175-176; and *Velásquez Rodríguez Case*, *supra*, paragraphs 166-167.

¹³³ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 187; *Myrna Mack Chang Case*, *supra*, para. 141; *Bulacio Case*, *supra*, para. 72; and *Juan Humberto Sánchez Case*, *supra*, para. 147.

143. Article 63(1) of the American Convention provides 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.

144. The Honorable Court's *jurisprudence constante* has been that

(...) Article 63(1) of the American Convention contains a common-law provision that constitutes one of the fundamental principles of contemporary International Law regarding the responsibility of the States. According to it, when an illegal act attributable to the State takes place, the latter immediately incurs a responsibility for the violation of the international provision involved, with the attendant duty of providing reparations and of making the consequences of said violation cease.¹³⁴

145. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the Honorable Court's judgments are carried beyond the realm of moral condemnation. Reparations are the measures that will cause the effect of the violations committed to disappear. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to restore the situation as it was prior to the violation.

146. Where full restitution is not possible, as is true in the case of one of the victims in the instant case, it is up to the Inter-American Court to order a series of measures that will not only ensure that the violated rights are respected but also redress the consequences that the violations caused and ensure payment of indemnification as compensation for the damage caused in that case.¹³⁵ In such cases, the compensation is, first of all, for the damages –material and moral– suffered by the injured parties.¹³⁶ "Reparations shall be proportionate to the gravity of the violations and the resulting damage."¹³⁷ Furthermore, reparations have another, no less important purpose, which is to deter and put a stop to future violations.

¹³⁴ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 187; *Case of the 19 Merchants*, *supra*, para. 220; *Maritza Urrutia Case*, Judgment of November 27, 2003, Series C No. 103, para. 141; and *Myrna Mack Chang Case*, *supra*, para. 235.

¹³⁵ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 189; *Case of the 19 Merchants*, *supra*, para. 221; *Molina Theissen Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of July 3, 2004, Series C, No. 108, para. 42.

¹³⁶ IACHR, *Bulacio Case*, Judgment of September 18, 2003, Series C No. 100, para. 70; *Hilaire, Constantine and Benjamin et al Case*, *supra*, para. 204; and the "*White Van*" *Case (Paniagua Morales et al.)*, *Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of May 25, 2001, Series C No. 76, para. 80.

¹³⁷ United Nations, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law* prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, E/CN.4/Sub.2/1996/17 para. 7. See also IACtHR, *Hilaire, Constantine, Benjamin et al. Case*, *supra*, para. 205; *Cantoral Benavides Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of December 3, 2001, Series C No. 88, para. 42, and *Cesti Hurtado Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of May 31, 2001, Series C No. 78, para. 36.

147. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.¹³⁸ "Whenever a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."¹³⁹

148. In the instant case, the Inter-American Commission has shown that the State incurred international responsibility for violation of the aforementioned provisions of the Convention, to the detriment of Santiago Fortunato Gómez Palomino, his mother Victoria Margarita Palomino Buitrón and his partner at the time of the events, Esmila Liliana Conislla Cárdenas. Despite the seriousness of the events, more than twelve years have passed since the victim's forced disappearance, yet no effective measures have been taken to locate his whereabouts and identify, prosecute and punish those responsible. Thus this case remains in complete impunity.

149. Finally, pursuant to the Rules of Court, which give the individual autonomous standing in its proceedings, in these submissions the Commission will confine itself to elaborating upon the general standards that the Honorable Court should apply in the matter of reparations and costs in the instant case. The Inter-American Commission understands that it is up to the victims' relatives and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and articles 23 and related provisions of the Rules of Court. Should the victim's next of kin not exercise this right the Commission would respectfully request that the Honorable Court give the Commission an opportunity in the proceedings to put a *quantum* on the claims. The Inter-American Commission will promptly inform the Honorable Court should it have any observation regarding the *quantum* on the damages sought by the victim's next of kin or their representatives.

B. Measures of reparations

150. The Court has held that measures of reparation tend to remove or redress the consequences of the violations committed.¹⁴⁰ Those measures include the various ways in which a State can compensate for the international responsibility it has incurred.

¹³⁸ IACHR, *Myrna Mack Chang Case*, *supra*, para. 143; *Bulacio Case*, *supra*, para. 72 and IACtHR, *Juan Humberto Sánchez Case*, *supra*, para. 149.

¹³⁹ Sergio García Ramírez, "Las reparaciones en el sistema interamericano de protección de los derechos humanos", paper presented at the seminar titled "The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century," San José, Costa Rica, November 1999.

¹⁴⁰ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 190; *Case of the 19 Merchants*, *supra*, para. 223; *Myrna Mack Chang Case*, *supra*, para. 237; *Cantos Case*, *supra*, para. 108, and the *Caracazo Case*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 78.

Under international law, those measures may include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴¹

151. The United Nations Commission on Human Rights has determined that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁴²

152. Based on the foregoing considerations, the Inter-American Commission is asking that the Honorable Court order measures of full reparation that also serve to send a message critical of the impunity true of the vast majority of the human rights violations in the member States of the Organization of American States. The problem of impunity requires establishment or reinforcement, where necessary, of the judicial and administrative mechanisms that enable victims to obtain reparation through *ex officio* procedures that are swift, just, inexpensive and accessible.

153. Based on the evidence presented in the present application and given the criteria the Honorable Court has established in its case law, the Inter-American Commission is submitting its conclusions and claims concerning the measures of reparation for the pecuniary and non-pecuniary damages and other forms of reparation and satisfaction that are owed as a consequence of the forced disappearance of Santiago Fortunato Gómez Palomino.

1. Measures of compensation

154. The Court has established the fundamental criteria for establishing just indemnification calculated to be adequate and effective financial compensation for the harm caused by the human rights violations. The Court has held that the indemnification is merely compensatory in nature, and shall be awarded to the extent and in an amount sufficient to redress the pecuniary and non-pecuniary damages caused.¹⁴³

¹⁴¹ See United Nations, *Preliminary Report* submitted by Theo Van Boven, Special Rapporteur, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the Right to Restitution, Compensation, and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub.1/1990/10, July 26, 1990. See also IACtHR, *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 IACtHR, *Castillo Páez Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43.

¹⁴² United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/17*, May 24, 1996, para. 7.

¹⁴³ IACHR., *Hilaire, Constantine and Benjamin et al. Case*, *supra*, para. 204; *The "White Van" Case (Paniagua Morales et al.)*, *Reparations*, *supra*, para. 80; *Castillo Páez Case. Reparations*, *supra*, para. 52 and *Garrido and Baigorria Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, para. 41.

i. Pecuniary damages

155. The *jurisprudence constante* of the Inter-American Court on the subject of reparations has been that pecuniary damages include both *damnum emergens* and *lucrum cessans*, as well as any nonmaterial and moral damages for the victim and, in some cases, his nuclear family.¹⁴⁴

156. *Damnum emergens* has been defined as any monies and personal effects lost as a direct and immediate consequence of the facts in the case. This category includes any expenses that the victims and the victims' next of kin incurred as a direct result of the facts in the case.¹⁴⁵ *Lucrum cessans*, on the other hand, has been defined as the income or benefits that ceased to be obtained on the occasion of a given event and that can be quantified using certain measurable and objective indicators.¹⁴⁶

157. In addition to the loss of their loved one, Santiago Fortunato Gómez Palomino's next of kin suffered other losses as well. Santiago Fortunato Gómez Palomino was one of the main sources of financial support to his mother and his nuclear family. As a result of what happened, Santiago Fortunato Gómez Palomino's mother, in particular, was forced to sustain very considerable and critical material losses and had to take over the job of rearing and educating her granddaughter.

158. Notwithstanding the claims that the representatives of the victims and their next of kin should submit at the proper moment in these proceedings, the IACHR is asking the Honorable Court to order, as equitable relief, pecuniary compensation for the *damnum emergens* and *lucrum cessans* in this case, in exercise of its far-reaching authority in this regard.

ii. Non-pecuniary damages

159. On the subject of non-pecuniary damages, the Court has held that:

[...]Non-pecuniary damages might include the pain and suffering caused to the direct victims and to their loved ones, discredit to things that are very important for persons, other adverse consequences that cannot be measured in monetary terms, and disruption of the lifestyle of the victim or his family. It frequently happens that the various types of non-pecuniary damages have no specific monetary equivalent. To make full restitution to the victims in such cases, only two types of compensation are possible. First, payment of a sum of money or delivery of goods and services of appreciable cash value, which the Court determines in reasonable exercise of its judicial authority and on the basis of equity. Second, through the performance of acts or works that are public in scope and impact and that serve to restore a

¹⁴⁴ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 205 citing from the *Maritza Urrutia Case*, *supra* 5, para. 155; *Myrna Mack Chang Case*, *supra*, para. 250; and *Juan Humberto Sánchez Case*, *supra*, para. 162.

¹⁴⁵ IACHR, *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 147; *Aloeboetoe et al. Case. Reparations* (Art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 50.

¹⁴⁶ *Ibid.*

victim's reputation, good name, and dignity, consolidate his debts or convey a message officially denouncing the human rights violations in question and pledging to make efforts to ensure that such violations will not recur.¹⁴⁷

160. The Court has also suggested that there is a presumption of non-pecuniary damages sustained by victims of human rights violations; in other words, the moral or nonmaterial damages inflicted upon the victims is self-evident, since it is characteristic of human nature that anybody subjected to aggression and abuse will experience moral suffering and that "no evidence is required to arrive at this conclusion."¹⁴⁸

161. The United Nations Working Group on Enforced or Involuntary Disappearances has stated that enforced 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 victims are well aware that their families don't know what has become of them and that the chances are slim that anyone will come to their aid. Having been removed from the protective precinct of the law and "disappeared" from society, they are in fact deprived of all their rights and are at the mercy of their captors. If death is not the final outcome and they are eventually released from the nightmare, the victims may suffer a long time from the physical and psychological consequences of this form of dehumanization and from the brutality and torture which often accompany it.

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.¹⁴⁹

162. As the Court will be able to ascertain for itself, the next of kin of Santiago Fortunato Gómez Palomino suffered their loss under violent circumstances, made worse by the anguish and uncertainty caused by not knowing their loved one's whereabouts. Compounding all this is the absolute impunity that exists with regard to his disappearances

¹⁴⁷ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 211; *Case of the 19 Merchants*, *supra*, para. 244; and the *Molina Theissen Case*, *supra*, para. 65.

¹⁴⁸ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 217; *Case of the 19 Merchants*, *supra*, para. 248.

¹⁴⁹ United Nations, Office of the High Commissioner for Human Rights, *Enforced or Involuntary Disappearances, Fact Sheet No. 6*, Geneva, 1993, pp. 1 and 2.

and the absence of effective measures to identify, prosecute and punish the guilty parties, all of which magnifies the suffering being endured by the victim's next of kin.

163. Based on the foregoing considerations and given the grave circumstances of the instant case, the intensity of the suffering that the respective events have caused to the victim and his next of kin, the altered circumstances of the lives of the victims' next of kin, and the other nonmaterial consequences that have befallen them and the consequences that are economic or asset related, the Commission is requesting that the Court order payment of compensation in the form of non-pecuniary damages, based on equity and in consideration of the characteristics attending the circumstances of the victim's forced disappearance.

2. *Measures of satisfaction and guarantees of non-repetition*

164. Satisfaction has been defined as "any measure which the author of a breach of duty is bound to take under customary law or under an agreement by the parties to a dispute, apart from restitution or compensation ... seeking a token of regret and acknowledgment of wrongdoing."¹⁵⁰ Satisfaction involves measures of three kinds, generally taken cumulatively: apologies or any other gesture acknowledging authorship; prosecution and punishment of the individuals involved, and measures taken to prevent a repetition of the wrong done.¹⁵¹

165. Time and time again the Honorable Court has held that every individual and society as a whole have the right to be informed of what happened when human rights violations occur.¹⁵² Similarly, in a recent resolution, the United Nations Commission on Human Rights recognized that, "for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps towards rehabilitation and reconciliation, and urges States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public and to encourage victims to participate in such a process."¹⁵³

166. In keep with the Court's case law, which includes satisfaction and guarantees of nonrepetition as part of the reparations, the IACHR considers that one of the essential measures of satisfaction in the instant case is to carry through to completion a serious, thorough and effective investigation to determine the responsibility of the intellectual and material authors of the detention and subsequent forced disappearance of Santiago Fortunato Gómez Palomino since the failure to end the impunity will foster

¹⁵⁰ Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

¹⁵¹ *Idem*.

¹⁵² IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 230; *Case of the 19 Merchants*, *supra*, para. 261; and the *Molina Theissen Case*, *supra*, para. 81.

¹⁵³ United Nations, Resolution of the Commission on Human Rights, Impunity, E/CN.4/RES/2001/70, April 25, 2001.

"chronic recidivism of human rights violations, and total defenselessness of the victims and their relatives."¹⁵⁴

167. In its case law the Court has established that every person, including relatives of victims of gross human rights violation, has the right to the truth. Consequently, the victims' next of kin and society as a whole must be told what happened in the case of such violations.¹⁵⁵ The Court asserted the right of victims' relatives to know what happened to their loved ones and, as applicable, where their mortal remains are located.¹⁵⁶ This in itself is a measure of reparation and, therefore, an expectation that the State must satisfy for the victims' next of kin and society as a whole.¹⁵⁷

168. Further, the Court has held that

the delivery of the mortal remains in cases of detained-disappeared persons is, in itself, an act of justice and reparation. It is an act of justice to know the whereabouts of the disappeared person and it is a form of reparation because it allows the victims to be honored, since the mortal remains of a person merit being treated with respect by their relatives, and so that the latter can bury them appropriately.¹⁵⁸

169. The State must therefore take the necessary measures to locate the remains of Santiago Fortunato Gómez Palomino, which have not yet been found. This, in order that his relatives might find closure to their grief over their loved one's disappearance and, if possible, perhaps some measure of reparation for the wrong done.

170. As for the investigation that the Peruvian State must conduct, the Court has been very emphatic in its finding that

the State must ensure that the domestic proceeding to investigate and punish those responsible for the facts in this case attains its due effects and, specifically, it must abstain from resorting to legal concepts such as amnesty, extinguishment, and the establishment of measures designed to eliminate responsibility. In this regard, the Court has already pointed out that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them

¹⁵⁴ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 132 citing from the *Myrna Mack Chang Case*, *supra*, footnote 319; and *idem*, paragraphs 148 and 228 (quotation marks omitted).

¹⁵⁵ IACHR, *Case of the Gómez Paquiyauri Brothers*, *supra*, para. 231; *Case of the 19 Merchants*, *supra*, para. 263; the *Myrna Mack Chang Case*, *supra*, para. 275.

¹⁵⁶ IACHR *Castillo Páez Case*, *supra*, para. 90; *Caballero Delgado and Santana Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997, para. 58; and *Neira Alegría et al. Case. Reparations*, Judgment of September 19, 1996, para. 69.

¹⁵⁷ IACHR, *Castillo Páez Case*, *supra*, para. 90.

¹⁵⁸ IACHR *Trujillo Oroza Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002, para.115.

prohibited because they violate non-derogable rights recognized by international human rights law.¹⁵⁹

171. The Inter-American Commission is therefore requesting the Court to order the Peruvian State to complete an effective investigation, in keeping with the international obligations it undertook of its own free will. Those measures are considered essential as satisfaction to the next of kin of the victims, and as a guarantee against non-repetition of the violations.

172. In connection with the guarantee of non-repetition, the Commission is also asking the Court to order the Peruvian State to amend Article 320 of the Penal Code now in force, which describes the crime of "disappearance by public officials" in the manner indicated at paragraphs 135-138, so as to make that article compatible with the Inter-American Convention on Forced Disappearance of Persons.

173. Based on these considerations, the Commission is requesting that the Court order the State to take the following actions as measures of satisfaction and guarantees of non-repetition:

i) That the State take the measures necessary to locate the whereabouts of Santiago Fortunato Gómez Palomino so that his next of kin might find closure to their grief over their loved one's disappearance and thereby make possible some measure of reparation for the harm caused;

ii) That the State carry out a thorough judicial inquiry of the facts in this case, in which all those responsible –material and intellectual authors alike- are identified, prosecuted and then duly punished;

iii) That the outcome of the judicial process be made public so that the right to the truth of the victims' next of kin and Peruvian society as a whole is served;

iv) That the State, in consultation with the victims' relatives, arrange a symbolic tribute designed to restore Santiago Fortunato Gómez Palomino's good name.

v) That the State amend Article 320 of the Penal Code, which criminalizes forced disappearance, to make it compatible with the Inter-American Convention on Forced Disappearance of Persons.

C. The beneficiaries of the reparations owed by the State

174. Article 63(1) of the American Convention requires reparation of the consequences of a breach of a right or freedom and that "fair compensation be paid to the injured party" The persons entitled to that compensation are, as a rule, those directly harmed by the facts of the violation in question. The Court presumes that a person's

¹⁵⁹ IACHR, *Myrna Mack Chang Case*, *supra*, para. 276.

suffering and death causes non-pecuniary damage to his children, spouse or partner, parents, and siblings, and that harm need not be proved.¹⁶⁰

175. Given the nature of the instant case, the beneficiaries of any reparations that the Honorable Court should see fit to order as a result of the human violations committed by the Peruvian State in this case are: Santiago Fortunato Gómez Palomino (victim), Victoria Margarita Palomino Buitrón (mother and victim), Esmila Liliana Conislla Cárdenas (former partner and victim). The following relatives of Santiago Fortunato Gómez Palomino should also be named as beneficiaries: Pascual Gómez Mayo (father) (deceased)¹⁶¹, María Dolores Gómez Palomino (sister), Luzmila Sotelo Palomino (half-sister on the mother's side), Emiliano Palomino Buitrón (brother), Mónica Palomino Buitrón (sister), Mercedes Palomino Buitrón (sister) (deceased), Rosa Palomino Buitrón (sister), Margarita Palomino Buitrón (sister), Ana María Gómez Guevara (daughter of Santiago Fortunato Gómez Palomino and Edisa Guevara Díaz). As for María Chipana Flores, cousin of Santiago Fortunato Gómez Palomino and present at the time these events occurred, the Commission is requesting that if she is found to be among the injured parties, she be listed among the beneficiaries named by the Court.¹⁶²

176. Santiago Fortunato Gómez Palomino's mother, Victoria Margarita Palomino Buitrón, and his former partner, Esmila Liliana Conislla Cárdenas, are victims twice over of the violation of Article 5 of the American Convention, given their close emotional ties to Santiago Fortunato Gómez Palomino and, in the case of Esmila Liliana Conislla Cárdenas, the abuse to which she was subjected; they are also beneficiaries of Santiago Fortunato Gómez Palomino.

D. Costs and expenses

177. It is the *jurisprudence constante* of the Court that costs and expenses should be understood to be included within the concept of reparation established in Article 63(1) of the American Convention, because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.¹⁶³ This Court has also held that the costs to which Article 56(1)(h) of its Rules refers also include the various necessary and reasonable expenses that the victim or victims incur to have access to the

¹⁶⁰ IACHR, the *Case of the 19 Merchants*, supra, para. 229 citing from the *Maritza Urrutia Case*, supra, para. 169.a); the *"White Van" Case (Paniagua Morales et al.)*. Reparations, supra, paragraphs 108, 125, 143, 173 -174; *Myrna Mack Chang Case*, supra, para. 245, 264.c), 264.f).

¹⁶¹ See Appendix 18, Copy of the death certificate of Pascual Gómez Mayo.

¹⁶² See IACHR, *Case of the 19 Merchants*, supra, para. 232, applying the presumption regarding cousins as if they were siblings, since they lived under the same roof and were close, and inasmuch as the cousin participated in the search for him.

¹⁶³ IACHR, *Case of the Gómez Paquiyauri Brothers*, supra, para. 242; *Case of the 19 Merchants*, supra, para. 283; and *Molina Theissen Case*, supra, para. 95.

inter-American system for the protection of human rights. The fees of those who provide legal assistance are included among the expenses.

178. In the instant case, the Commission is requesting that once the Honorable Court has heard from the victims' representatives, it order the costs and expenses duly proven by them, bearing in mind the particular circumstances of the case.

X. CONCLUSIONS

179. Santiago Fortunato Gómez Palomino's forced disappearance violates multiple essential and non-derogable rights of the individual. These violations continue to this day inasmuch as the Peruvian State has failed to establish the victim's whereabouts or find his remains. More than twelve years after the facts in this case, impunity is absolute, as the Peruvian State has not criminally prosecuted and punished any of those responsible or assured the victim's relatives adequate reparations. Given the foregoing, the IACHR maintains that the Peruvian State violated articles 7, 5, 4, 8 and 25 of the American Convention, in combination with Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino. The State also violated articles 5, 8, 7 (6) and 25 in combination with Article 1(1), to the detriment of the relatives of Santiago Fortunato Gómez Palomino, in particular his mother, Victoria Margarita Palomino Buitrón, and the person who was his partner at the time of his disappearance, Esmila Liliana Conislla Cárdenas. Finally, the Peruvian State has failed to comply with its obligation under Article 2 of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons, by adopting and not amending Article 320 of the Penal Code currently in force in Peru, which defines the crime of forced disappearance.

XI. SUBMISSIONS

180. The Inter-American Commission is requesting the Honorable Court to adjudge and declare that:

a. The Peruvian State has violated articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), and 4 (Right to Life) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Santiago Fortunato Gómez Palomino, by virtue of his unlawful detention, forced disappearance and presumed death, which occurred in Lima, Peru, starting on July 9, 1992, and is imputable to the State.

b. The Peruvian State has violated Article 5 (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Victoria Margarita Palomino Buitrón and Esmila Liliana Conislla Cárdenas, owing to the pain and suffering caused by Santiago Fortunato Gómez Palomino's forced disappearance. Further, Esmila Liliana Conislla Cárdenas was subjected to mistreatment at the time of Santiago Fortunato Gómez Palomino's unlawful and arbitrary detention, in violation of Article 5 of the American Convention, in relation to Article 1(1) thereof.

c. The Peruvian State violated articles 8 (Right to a Fair Trial), 7(6) and 25 (Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention, to the detriment of Santiago Fortunato Gómez Palomino, his family and the person who was his partner at the time of his disappearance, Esmila Liliana Conislla Cárdenas, owing to the inefficacy of the petition of *habeas corpus* at the time of these events and the absolute impunity that persists in connection with Santiago Fortunato Gómez Palomino's forced disappearance.

d. By adopting and not amending Article 320 of the Penal Code in force in Peru, which defines the crime of forced disappearance, the Peruvian State has failed to comply with the obligation set forth in Article 2 (Domestic Legal Effects) of the American Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons.

181. In view of the preceding arguments of fact and of law and the conclusions presented above, the IACHR is asking that the Honorable Court order the Peruvian State:

a. To conduct a complete, impartial, effective and immediate investigation of the facts in order to establish responsibilities for the disappearance and presumed death of Mr. Santiago Fortunato Gómez Palomino, so that all persons who participated in his disappearance and subsequent assassination, at the various levels of decision-making and execution, may be brought to trial and duly punished.

b. To conduct a complete, impartial, and effective investigation to identify the persons who had a hand in the failed investigations and proceedings previously conducted into the disappearance of Santiago Fortunato Gómez Palomino, to determine blame for the failure to produce results and to punish the crimes.

c. To make adequate reparations to Mrs. Victoria Margarita Palomino Buitrón, mother of the victim, and the person who was his partner at the time, Esmila Liliana Cunislla Cárdenas, for the human rights violations of which they were direct victims, which reparations should include moral and material damages. Also, to make reparations for the violations against Santiago Fortunato Gómez Palomino by way of his beneficiaries.

d. To advance the measures necessary to search for, locate and identify the remains of Santiago Fortunato Gómez Palomino and deliver them to his family.

e. To take the measures necessary to amend Article 320 of the Penal Code, to make it compatible with the Inter-American Convention on Forced Disappearance of Persons.

f. To pay the costs and legal expenses incurred by the victims and their relatives in their representations of this case at the domestic level and in the proceedings conducted on the present case within the inter-American system of protection.

XII. SUPPORTING EVIDENCE

A. Documentary evidence

a. Appendices to the application:

1. Report 26/04, Case 11,062, Santiago Fortunato Gómez Palomino, Peru, March 11, 2004.
2. Copy of Santiago Fortunato Gómez Palomino's birth certificate, birth number five thousand seven hundred ninety-four, copy issued on December 10, 2002, No. 0026382.
3. Copy of Santiago Fortunato Gómez Palomino's Voter Identification, No.00994579.
4. Copy of the complaint that Victoria Margarita Palomino Buitrón and Francisco Soberón Garrido, Coordinator General of APRODEH, filed with the Superior Prosecutor for Human Rights on July 30, 1992, with receipt stamp dated August 3, 1992.
5. Copy of the complaint that Victoria Margarita Palomino Buitrón and Francisco Soberón Garrido, Coordinator General of APRODEH, filed with the Attorney General of the Nation on July 30, 1992, with receipt stamp dated August 3, 1992.
6. Copy of the summons sent to Victoria Margarita Palomino Buitrón to appear to make a statement in connection with complaint 451-92, June 11, 1993.
7. Copy of a press clipping "*Empezaron a disparar y la gente iba muriendo*" [They began firing and people were dying.] Confessions of the corruption network (IV). Former Colina agent narrates the Barrios Altos slaughter step-by-step. *Diario Perú*.21, Friday, March 14, 2003 edition, Report 21, pp. 8 and 9.
8. Copy of press report, "Office of the State's Attorney holds up the exhumation of the remains of alleged "Colina" victims. Attorney General has not yet authorized the experts' work." *Diario La Razón*. December 9, 2002 edition.
9. Copy of the notification sent to Victoria Margarita Palomino Butrino, entry No. 020-2002, Lima, November 7, 2003.
10. Copy of the press clipping "A grave is found where Colina Group killed its victims and caused them to disappear. *La República*. November 14, 2003.
11. Transcript of the statement made by Victoria Margarita Palomino Buitrón in the Office of Lima's Special Criminal Prosecutor, April 2002.
12. Transcript of the statement made by Esmila Liliana Conislla Cárdenas in the offices of DIRCOTE, January 20, 2003.

13. Statement made by Arcenio Antenor Gutiérrez Leon, July 19, 2002.

14. Transcript of the pertinent part of the statement made by collaborator 371 MCS in connection with the case titled "The Evangelista's Death," statement of December 6, 2001.

15. Transcript of the statement that María Chipana Flores made in the Office of Lima's Special Provincial Prosecutor on May 20, 2002, and the elaboration of that statement given in the Metropolitan Special Investigations Division on March 10, 2003.

16. Documents referring to the Colina Group's existence:

16.a. Copy of press report, *La República*, "In a document written in his own hand, Peruvian Army General Rodolfo Robles denounces: There is an assassination group in the Army, headed by Vladimiro Montesinos," May 7, 1993.

16.b. Friendly settlement agreement, IACHR Case No. 11,317, General (R) Robles Espinoza.

16.c. Truth and Reconciliation Commission, *Final Report*, , Lima, 2003, Volume VII, Chapter 2: Cases Investigated by the CVR: 2.59. The disappearance of Pedro Yauri (1992), pp. 649-658. Available at <http://www.cverdad.org.pe/ifinal/index.php>.

16.d. Copy of press report "Martín Rivas acknowledges the existence of Colina," *Perú.21*, December 10, 2002, *Política*, p. 6 .

16.e. Copy of a press report, "20 more former Colina agents are identified: *Perú.21*, October 29, 2002, *Política*, p. 6.

16.f. Copy of a press report, "Colina Group created by Montesinos," *Perú.21*, November 19, 2002, p. 8; copy of a press report, "The Doc brought Martín Rivas from Colombia", *Perú.21*, November 21, 2002, pp. 8 and 9; "Martín Rivas ready to testify against Fujimori," *Perú. 21*, November 20, 2002, p. 9.

16.g. Copy of press report "Hermoza confessed that "Colina" operated with Fujimori's full knowledge," *La República*, August 7, 2003.

16.h. Copy of press report, "Colina paramilitary group had its own budget," *La República*, November 6, 2003 edition.

16.i. Truth and Reconciliation Report, *Final Report*, Lima, CVR, 2003, Volume VI, Section four, p. 154. Available at <http://www.cverdad.org.pe/ifinal/index.php>.

17. Truth and Reconciliation Report, *Final Report*, Lima: CVR, 2003, Appendices, Appendix 4: Cases and Victims Registered by the CVR, Volume XII. List of Dead and

Disappeared Reported to the Truth and Reconciliation Commission 1980-2000, p. 166.
Available at <http://www.cverdad.org.pe/ifinal/index.php>.

18. Death certificate of Pascual Gómez Mayo.
19. Copy of the identification document of Victoria Margarita Palomino Buitrón and power of attorney she gave to APRODEH.
20. Birth certificate of Ana María Gómez Guevara; power of attorney given for her by her grandmother Victoria Margarita Palomino Buitrón to APRODEH, and her identification document.
21. Birth certificate of María Dolores Gómez Palomino, copy of her identification document and power of attorney granted to APRODEH.
22. Birth certificate of Luzmila Octavia Sotelo Palomino, copy of her identification document and power of attorney given to APRODEH.
23. Birth certificate (judicial) of Emiliano Palomino Buitrón, copy of citizenship data that APRODEH obtained from the Bureau of Identification and Vital Statistics (Registro Nacional de Identificación y Estado Civil - RENIAC), and power of attorney given to APRODEH.
24. Birth certificate (judicial) of Mónica Benedicta Palomino Buitrón, copy of her identification document and power of attorney given to APRODEH.
25. Birth certificate of Rosa Palomino Buitrón, copy of the citizenship data that APRODEH obtained from the Bureau of Identification and Vital Statistics (Registro Nacional de Identificación y Estado Civil - RENIAC), and power of attorney given to APRODEH..
26. Birth certificate Margarita Palomino Buitrón, copy of her military enlistment form and power of attorney given to APRODEH.
27. Copy of the citizenship data of Esmila Liliana Conislla Cárdenas, which APRODEH obtained from the Bureau of Identification and Vital Statistics (Registro nacional de identificación y Estado Civil - RENIAC) and power of attorney she gave to APRODEH.
28. Copy of the curriculum vitae of Dr. Sofia Macher.
29. Copy of the file of the proceedings on case 11,062, Santiago Fortunato Gómez Palomino, before the Inter-American Commission on Human Rights.

b. Request that the Peruvian State submit documents

182. The Commission is petitioning the Court to kindly ask the Peruvian State to present complete, notarized copies of the measures and proceedings conducted at the

domestic level in connection with the forced disappearance of Santiago Fortunato Gómez Palomino and, in particular, the statements made by eyewitnesses to the detention-disappearance of Santiago Fortunato Gómez Palomino and by collaborator 371-MCS.¹⁶⁴

B. Testimony of witnesses and experts

a. Witnesses

183. The Commission is submitting the following list of witnesses:

1. Victoria Margarita Palomino Buitrón. The Commission is offering this witness to testify about her son's forced disappearance, her efforts to locate him and the family circumstances in the wake of his disappearances, among other matters relevant to the object and purpose of this application. The address to which correspondence should be sent is that of her representative, which appears below.

2. Esmila Liliana Conislla Cárdenas. The Commission is offering this witness to testify to the forced disappearance of Santiago Fortunato Gómez Palomino, among other matters relevant to the object and purpose of the present application. Correspondence should be sent to APRODEH's address, which appears below.

3. María Elsa Chipana Flores. The Commission is offering this witness to testify about the forced disappearance of her cousin, Santiago Fortunato Gómez Palomino, and about other matters relevant to the object and purpose of this application. Correspondence may be sent to APRODEH's address, which appears below.

4. Arcenio Antenor Gutiérrez León. The Commission is offering this witness to testify about facts related to Santiago Fortunato Gómez Palomino's forced disappearance and other matters relevant to the object and purpose of this application. Correspondence may be sent to APRODEH's address, which appears below.

5. Julio Chuqui Aguirre. The Commission is offering this witness to testify about the Colina Group, facts relative to Santiago Fortunato Gómez Palomino's forced disappearance and other matters relevant to the object and purpose of this application. Correspondence may be sent to the National Prison Institute [Instituto Nacional Penitenciario] (INPE), Jr. Carabaya 456, Lima.

b. Experts

Sofía Macher. Sociologist, former member of the Truth and Reconciliation Commission and a member of the team of professionals with the *Instituto de Defensa Legal del Perú*. This and the other activities in her professional career are detailed in the

¹⁶⁴ It should be noted here that Article 41 of Law 23506 (*Habeas Corpus* and *Amparo* Act) provides that "The Supreme Court of Justice is required to send to the [international] bodies to which Article 39 refers, any laws, resolutions and other documents produced in the trial or trials that gave rise to the petition, and any other information that the international body believes it requires to better inform itself and better settle the matter submitted to its jurisdiction."

attached curriculum.¹⁶⁵ She will be able to inform the Honorable Court about the work done by the CVR, the patterns of human rights violations in Peru at the time of the events in this case, the "Colina" Group and its ties to the Peruvian State, and other issues relevant to the object and purpose of this application. Correspondence may be sent to the following address: Manuel Villavicencio 1191, Lince, Lima, Peru.

XIII. PARTICULARS ON THE ORIGINAL PETITIONERS, THE VICTIM AND HIS NEXT OF KIN

184. Pursuant to Article 33 of the Rules of Court, the Inter-American Commission presents below the following information on the representation of the victims' next of kin. In the proceedings before the Honorable Court, the *Asociación Pro Derechos Humanos* (APRODEH) will act as representative of the next of kin of the victims listed below. The powers of attorney for those persons are attached:

| Victim/s | Relative/s of the victim and kinship relationship | Appendix |
|-----------------------------------|--|----------|
| Santiago Fortunato Gómez Palomino | Victoria Margarita Palomino Buitrón (mother) | 19 |
| | Ana María Gómez Guevara (daughter of Santiago Fortunato Gómez Palomino and Edisa Guevara Diaz) | 20 |
| | María Dolores Gómez Palomino (sister) | 21 |
| | Luzmila Octavia Sotelo Palomino (half sister on mother's side) | 22 |
| | Emiliano Palomino Buitrón (brother) | 23 |
| | Mónica Benedicta Palomino Buitrón (sister) | 24 |
| | Rosa Palomino Buitrón (sister) | 25 |
| | Margarita Palomino Buitrón (sister) | 26 |
| Esmila Liliana Conislla Cárdenas | | 27 |

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¹⁶⁵ See Appendix 28, curriculum vitae of Dr. Sofia Macher.