

# Terrones Silva et al. v. Peru

## ABSTRACT<sup>1</sup>

*This case is about five forced disappearances that took place during the late 1980s to 1990s, during conflict between the Government of Peru, the Communist Party of Peru (also known as Shining Path) and the Túpac Amaru Revolutionary Movement. Eventually, the Court found Peru in violation of several articles of the American Convention, of the Inter-American Convention to Prevent and Punish Torture, and of the Inter-American Convention on Forced Disappearance of Persons.*

### I. FACTS

#### A. Chronology of Events

##### 1. Facts Relating to the Disappearance of Mr. Wilfredo Terrones Silva

***Before August 1991:*** Mr. Terrones Silva is a lawyer for the Association of Democratic Lawyers (Asociación de Abogados Democráticos).<sup>2</sup> The association provides legal assistance and defense to persons being tried on terrorism charges.<sup>3</sup> Mr. Terrones Silva provides legal defense to members of the Communist Party of Peru-Shining Path (Partido Comunista del Perú-Sendero Luminoso; “PCP-SL”).<sup>4</sup> Besides being affiliated with the Association of Democratic Lawyers, he is also the assistant base director and leader of Shining Path in the province of Jaén.<sup>5</sup> Before his alleged forced disappearance, Mr. Terrones Silva is accused of committing terrorist acts in the province of Jaén and, as a result, is incarcerated in the Chiclayo and El Frontón prisons for five years.<sup>6</sup>

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1. Gabrielle Szlachta-McGinn, Author; Kevin Zipser, Editor; Pamela Huynh, Senior IACHR Editor; Elizabeth Russo, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am Ct. H.R. (ser. C) No. 360, ¶ 142 (Sept. 26, 2018).

3. *Id.* ¶ 51.

4. *Id.* ¶ 142.

5. *Id.* ¶ 142.

6. *Id.* ¶ 56.

**August 26, 1992:** A friend of Mr. Terrones Silva's father contacts him from the Castro Castro Prison to request legal assistance.<sup>7</sup> The friend indicates he is being held following a prison riot.<sup>8</sup> Around 5:00 p.m., Mr. Terrones Silva leaves his law office in Callao, Peru and proceeds to the prison.<sup>9</sup> Mr. Terrones Silva arrives at the prison, is seen by street vendors entering the gate, and is never seen again.<sup>10</sup>

**August 28, 1992:** After searching for Mr. Terrones Silva at local hospitals, police stations, and service centers, his next of kin report his disappearance to the Fifteenth Criminal Prosecution Service of Lima.<sup>11</sup>

**September 1, 1992:** Mr. Terrones Silva's next of kin report his disappearance to the Missing Persons Department of the National Police Force.<sup>12</sup>

**November 5, 1992:** The State reports that it implemented search procedures in an attempt to locate Mr. Terrones Silva.<sup>13</sup>

**November 11, 1992:** The State reports that the National Police visited Mr. Terrones Silva's law firm several times but were unable to locate him.<sup>14</sup>

**March 19, 1993:** The State reports there is no evidence to establish a kidnapping took place and concludes that Mr. Terrones Silva went into hiding.<sup>15</sup>

**July 26, 2001:** The Peruvian magazine "Caretas" publishes an interview with Mr. Clemente Alayo Calderón, a former member of the Grupo Colina.<sup>16</sup> From his prison cell, Mr. Alayo Calderón describes the group's massacre of alleged terrorists, and states that "killing a member of the

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7. *Id.* at n.52.

8. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, at n.52.

9. Terrones Silva et al. v. Peru, Report on Merits, Report No. 5/16, Inter-Am. Comm'n H.R., Case No. 11.053, ¶ 16 (April 13, 2016).

10. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, at n.52.

11. Terrones Silva et al. v. Peru, Report on Merits, ¶ 70.

12. *Id.*

13. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 59.

14. *Id.*

15. *Id.* ¶ 60.

16. Terrones Silva et al. v. Peru, Report on Merits, ¶ 71.

Shining Path was, according to him, proof of bravery.”<sup>17</sup> Furthermore, Mr. Alayo Calderón describes how the group disposed of bodies by throwing them into the sea.<sup>18</sup> Mr. Alayo Calderón then references Mr. Terrones Silva, “the democratic lawyer,” as one of the individuals who met such fate.<sup>19</sup>

**June 27, 2004:** A member of the Division of Missing Persons Investigations (la División de Investigación de Personas Desaparecidas; “DIVIPD”) of the National Police of Peru (la Policía Nacional del Perú; “PNP”) force arrives at Mr. Terrones Silva’s home and interviews his brother-in-law, Mr. Manuel Landázuri Gómez.<sup>20</sup> Mr. Landázuri Gómez confirms he has not seen or heard from Mr. Terrones Silva since August 26, 1992.<sup>21</sup>

**June 25, 2005:** The State reiterates that Mr. Terrones Silva went into hiding, as there is no evidence of kidnapping, incarceration, or death.<sup>22</sup> As a result, the State reports the case is still pending resolution despite the many steps taken to locate him.<sup>23</sup>

**May 31, 2011:** The Information System Supporting Prosecution Services (Sistema de Información de Apoyo al Trabajo Fiscal; “SIATF”) of the Public Prosecutor’s Office reports that proceedings against Mr. Terrones Silva for the crime of terrorism are underway.<sup>24</sup>

**August 15, 2011:** Mr. Terrones Silva’s petitioners report that the State has failed to open a new investigation into his alleged forced disappearance and have been unable to identify those responsible.<sup>25</sup>

**January 26, 2018:** Mr. Terrones Silva’s son, Mr. Wilfredo Terrones Landázuri makes a statement before the Second Supraprovincial Criminal Prosecution Service.<sup>26</sup> In his statement, Mr. Terrones Landázuri

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17. *Id.*

18. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 145.

19. *Id.*

20. Terrones Silva et al. v. Peru, Report on Merits, ¶ 78.

21. *Id.*

22. *Id.* ¶ 76.

23. *Id.* ¶ 77-78.

24. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

25. Terrones Silva et al. v. Peru, Report on Merits, ¶ 80 n.56.

26. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, at n.239.

alleges that while he interned at the Castro Castro Prison a member of the Grupo Colina corroborated the 2001 newspaper interview account of his father's murder.<sup>27</sup> The member stated that at the end of 1992 he saw Mr. Terrones Silva at a military base following his kidnap.<sup>28</sup> The member stated further that he witnessed Mr. Terrones Silva being tortured, murdered, and cut with a chainsaw.<sup>29</sup>

## 2. Facts Relating to the Disappearance of Ms. Teresa Díaz Aparicio

**Before March 27, 1989:** Ms. Teresa Díaz Aparicio is a teacher for the School of Social Sciences at the National University of San Marcos (Universidad Mayor de San Marcos; "UNMSM"), a member of the Teachers Association, and the Social and Legal Services Commission of the UNMSM.<sup>30</sup> Additionally, she monitors the situation of detained teachers and students through legal proceedings.<sup>31</sup>

**March 27, 1989:** Personnel from the National Directorate Against Terrorism (la Dirección Nacional Contra el Terrorismo; "DINCOTE") search Ms. Teresa Díaz Aparicio's home and uncover a series of documents that indicate her affiliation with the Shining Path.<sup>32</sup> They confiscate the documents and detain Ms. Teresa Díaz Aparicio.<sup>33</sup>

**March 28, 1989:** DINCOTE dismisses the charges against Ms. Teresa Díaz Aparicio and releases her from detainment.<sup>34</sup>

**March 31, 1989:** During her detention, the DINCOTE question Ms. Teresa Díaz Aparicio about the confiscated documents, her affiliation with Shining Path, and her opinion on the attacks perpetrated by Shining Path.<sup>35</sup> Ms. Teresa Díaz Aparicio denies any involvement with Shining Path and condemns the attacks.<sup>36</sup>

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27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* ¶ 65.

31. *Id.*

32. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 66.

33. *Id.*

34. Terrones Silva et al. v. Peru, Report on Merits, ¶ 17.

35. *Id.* ¶ 66.

36. *Id.* ¶ 83.

**April 5, 1989:** The National Police Force reports that Ms. Teresa Díaz Aparicio supports the Shining Path and is in charge of providing accommodations, food, medical help, and any other needs requested by Shining Path members.<sup>37</sup> Ms. Teresa Díaz Aparicio is transferred to the 41<sup>st</sup> Public Provincial Penitentiary of Lima where her alleged crime of terrorism will be further investigated.<sup>38</sup>

**April 7, 1989:** The Provincial Criminal Prosecution Service (la Fiscalía Provincial Penal) concludes there is not enough evidence on file to convict Ms. Teresa Díaz Aparicio and order her release.<sup>39</sup>

**August 10, 1989:** The National Police Force conduct a warrantless search of Ms. Teresa Díaz Aparicio's home but are unable to locate her.<sup>40</sup> Prior to their departure, members of the National Police Force instruct Ms. Teresa Díaz Aparicio's mother to go to the Counter-Terrorism Department the next day, but they do not leave any written notification or a subpoena.<sup>41</sup>

**August 11, 1989:** Ms. Teresa Díaz Aparicio files a habeas corpus petition against the Director of the Counter-Terrorism Department (Dirección contra el terrorismo; "DIRCOTE") and alleges she was threatened with arbitrary detention after members of the National Police Force broke into her home.

**August 17, 1989:** The Court rules the habeas corpus petition inadmissible after the Deputy Chief and Chief of DIRCOTE give statements denying that they gave orders to the National Police Force personnel to raid Ms. Teresa Díaz Aparicio's home.<sup>42</sup> Further, the Court concludes there is not enough evidence to establish the existence of a pending DIRCOTE investigation against Ms. Teresa Díaz Aparicio or any threat against her freedom.<sup>43</sup>

**August 19, 1992:** Ms. Teresa Díaz Aparicio leaves her home in Rimac, Lima with her brother, Mr. Federico Díaz Aparicio, to go to work at

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37. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 66.

38. Terrones Silva et al. v. Peru, Report on Merits, ¶ 85.

39. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 66.

40. Terrones Silva et al. v. Peru, Report on Merits, ¶ 86.

41. *Id.*

42. *Id.* ¶ 87.

43. *Id.*

UNMSM.<sup>44</sup> Ms. Teresa Díaz Aparicio does not make it to work, nor does she communicate with any of her family, friends, or coworkers, and is never seen again.<sup>45</sup>

**November 17, 1992:** The Counter-Terrorism Department of the National Police Force of Peru submits a report which declares that Ms. Teresa Díaz Aparicio is not a registered detainee, and that the PNP have not captured her.<sup>46</sup> Additionally, there is no evidence of record that the police have located Ms. Teresa Díaz Aparicio's body or that anyone has filed a complaint regarding her disappearance.<sup>47</sup>

**February 25, 2002:** Mr. Federico Díaz Aparicio files a habeas corpus appeal against the Director of DINCOTE and the Minister of Justice for the disappearance of his sister.<sup>48</sup>

**February 27, 2002:** The 19th Criminal Court of Lima declares Mr. Federico Díaz Aparicio's petition inadmissible because it has been ten years since her disappearance and he does not have knowledge of Ms. Teresa Díaz Aparicio's whereabouts.<sup>49</sup>

**March 7, 2002:** Mr. Federico Díaz Aparicio appeals the February 27, 2002 denial.<sup>50</sup>

**March 8, 2002:** The 19th Criminal Court of Lima grants Mr. Díaz Aparicio's appeal and forwards it to the First Criminal Chamber of the Superior Court of Justice of Lima.<sup>51</sup>

**March 21, 2002:** The First Criminal Chamber of the Superior Court of Justice of Lima begins to conduct an investigation into Ms. Teresa Díaz Aparicio's whereabouts.<sup>52</sup>

**May 30, 2002:** The First Chamber of the Superior Court of Justice issues a mandate to the Provincial Prosecutor ordering the prosecutor to proceed

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44. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 67.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* ¶ 70.

49. *Id.*

50. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 71.

51. *Id.*

52. *Id.*

with the investigation into the disappearance of Ms. Teresa Díaz Aparicio.<sup>53</sup>

**July 31, 2002:** Ms. Teresa Díaz Aparicio’s brother testifies before the Commission of Truth and Reconciliation (la Comisión de la Verdad y Reconciliación del Perú; “CVR”) that his family did not report his sister’s disappearance out of fear of the DINCOTE who had been continually monitoring them.<sup>54</sup>

**September 11, 2002:** The Prosecution Service Specializing In Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves of the Public Prosecutor’s Office orders an investigation be opened.<sup>55</sup>

**March 7, 2003:** The Public Prosecutor’s Office opens a thirty-day police investigation into the disappearance of Ms. Teresa Díaz Aparicio, collects evidence, and requests information from the State.<sup>56</sup>

**April 7, 2004:** The Criminal Investigation Division of the Homicide Department of the of the National Police Force issues a report stating that since Ms. Teresa Díaz Aparicio was detained by DINCOTE personnel in March 1989, but there is no information to suggest police detained her further.<sup>57</sup> In addition, the report states that based on her affiliation with the Shining Path and the circumstances surrounding her disappearance, it is more likely Ms. Teresa Díaz Aparicio went into hiding.<sup>58</sup>

**November 12, 2007:** Ms. Petronilla Becerra Raimondi, Ms. Teresa Díaz Aparicio’s cousin, gives a statement to the Public Prosecutor’s Office stating that a few days after her disappearance, Ms. Teresa Díaz Aparicio’s mother searched the morgue, the school where Ms. Teresa Díaz Aparicio worked, and reported her disappearance to the National Police Force.<sup>59</sup>

**February 13, 2009:** The Second Supraprovincial Criminal Prosecutor’s Office concludes that there are no grounds to file a criminal complaint

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53. *Id.* ¶ 72.

54. *Id.* ¶ 69.

55. *Id.* ¶ 73.

56. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

57. *Id.* ¶ 74.

58. *Id.* ¶ 74.

59. Terrones Silva et al. v. Peru, Report on Merits, ¶ 91.

against anyone responsible for the alleged forced disappearance of Ms. Teresa Díaz Aparicio and they order that her files be provisionally archived.<sup>60</sup> The reasons for this ruling include (1) the DIRCOTE PNP's list of detainees who were captured between July and August 1992 does not include Ms. Teresa Díaz Aparicio's name, (2) the DIRCOTE Registry of Detainees does not include Ms. Teresa Díaz Aparicio's name, (3) the police personnel who serviced the DIRCOTE Detainee Monitoring Office between July and August 1992 also kept of list of detainees' names and Ms. Teresa Díaz Aparicio's name is not on that list, and (4) it is impossible to identify anyone that may have been responsible for the forced disappearance, therefore, the case must be provisionally archived.<sup>61</sup>

**August 8, 2012:** The Second Supraprovincial Criminal Prosecution Service reopens the investigation.<sup>62</sup>

### 3. Facts Relating to the Disappearance of Ms. Cory Clodolia Tenicela Tello

**Before October 2, 1992:** Ms. Tenicela Tello is an engineering student at the National University of the Center of Peru (Universidad Nacional del Centro del Perú; "UNCP") and a beauty products salesperson.<sup>63</sup>

**October 2, 1992:** Ms. Tenicela Tello leaves her home to collect payments in the center of Huancayo, Department of Junín, and is never heard from again.<sup>64</sup>

**October 14, 1992:** Ms. Tenicela Tello's mother, Ms. Amadea Tello Barrera, files a complaint for her daughter's disappearance with the Provincial Prosecution Service of Junín.<sup>65</sup>

**October 22, 1992:** Ms. Tenicela Tello's mother's home is raided by police and the police inform her that her daughter is being detained in another city for an ordinary offense.<sup>66</sup>

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60. *Id.* ¶ 103.

61. *Id.*

62. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 79.

63. *Id.* ¶ 83.

64. *Id.* ¶ 84.

65. *Id.* ¶ 87.

66. *Id.*

**October 26, 1992:** Ms. Tenicela Tello's mother files a habeas corpus appeal with the Criminal Rota Court in Huancayo for her daughter's detention and arrest in Huancayo-Junín, and subsequent transfer to the Criminal Investigation Department for not carrying her identity papers.<sup>67</sup>

**November 6, 1992:** The Brigadier General of the 31<sup>st</sup> Infantry Division of the General Command requests information from the Chief of Police regarding Ms. Tenicela Tello's arrest.<sup>68</sup> The Colonel of the National Police reports that they did not arrest her.<sup>69</sup>

**July 22, 2003:** The Fourth Provincial Criminal Prosecution Service of Huancayo is instructed by the Prosecution Service Specializing in Forced Disappearances, Extrajudicial Executions, and the Exhumation of Clandestine Graves to expand the investigation in another criminal proceeding to include Ms. Tenicela Tello's case along with thirty-two other people.<sup>70</sup>

**August 28, 2003:** The Truth and Reconciliation Commission of Peru releases a report which states that between 1989 and 1993 more than 100 students at UNCP disappeared or were killed, with 1992 being the year with the most incidents.<sup>71</sup>

**September 3, 2013:** The First Superior Criminal Prosecution Service issues a ruling which holds the Commander of the 31<sup>st</sup> Division of the Peruvian Army, "DGC" (January 1991-December 1992), and the Chief of the Civic Action Base at the UNCP, "BRE" (February 1992-February 1993) responsible for multiple illegal acts including the detention and forced disappearance of Ms. Tenicela Tello.<sup>72</sup> The ruling indicates that between 1989 and 1993 the UNCP in Huancayo was at the center of the struggle between State actors and suspected terrorist organizations.<sup>73</sup> As a result, the armed forces used violent tactics including, but not limited to, the detention, kidnapping, and killing of University students and staff.<sup>74</sup> Following the ruling, the National Superior Criminal Prosecution

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67. *Id.*

68. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 87

69. *Id.*

70. Terrones Silva et al. v. Peru, Report on Merits, ¶ 147.

71. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 47, 53.

72. *Id.* ¶ 88.

73. Terrones Silva et al. v. Peru, Report on Merits, ¶ 149.

74. *Id.*

Service formally files criminal proceedings against both DGC and BRE.<sup>75</sup>

**October 20, 2014:** The Third National Criminal Court formally files criminal proceedings against a retired Army Colonel referred to as “LDP”.<sup>76</sup> LDP is charged with crimes against personal liberty and aggravated kidnapping to the detriment of Ms. Tenicela Tello.<sup>77</sup>

#### 4. Facts Relating to the Disappearance of Mr. Néstor Rojas Medina

**Before November 9, 1990:** Mr. Rojas Medina studies radio broadcasting and works as a trainee at the radio broadcasting station, Raidiodifusión RBC, in Lima, Peru.<sup>78</sup>

**November 9, 1990:** The Shining Path raids the village of Juan Santos Atahualpa de Tocache.<sup>79</sup> They burn down Mr. Rojas Medina’s mother’s house, Ms. Marcelina Medina Negrón, and murder his cousin.<sup>80</sup> Mr. Rojas Medina and his family abandon their home in Juan Santos Atahualpa de Tocache and move to Lima.<sup>81</sup>

**January 1991:** Mr. Rojas Medina returns to Juan Santos Atahualpa de Tocache to pick up belongings his family left behind, withdraw savings from his mother’s bank account,<sup>82</sup> and collect money owed to his family for the sale of goods.<sup>83</sup>

**January 26, 1991:** Mr. Rojas Medina is arrested while police officers perform a random roundup operation in Tocache.<sup>84</sup> He is taken to the Tocache Police Station where he is detained for eight days until his transfer to the Tocache military base.<sup>85</sup>

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75. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 89.

76. *Id.*

77. *Id.*

78. Terrones Silva et al. v. Peru, Report on Merits, ¶ 122.

79. *Id.* ¶ 19.

80. *Id.*

81. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 98.

82. Terrones Silva et al. v. Peru, Report on Merits, ¶ 19.

83. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 95.

84. Terrones Silva et al. v. Peru, Report on Merits, ¶ 19.

85. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 97.

**February 5, 1991:** An initial complaint for the disappearance of Mr. Rojas Medina is filed with the Office of the Provincial Prosecutor of Tocache.<sup>86</sup>

**February 6, 1991:** An investigation is opened against Tochache's General Police and the National Police Force regarding Mr. Rojas Medina's arrest.<sup>87</sup>

**February 14, 1991:** Senator Hurtado Pozo contacts the Chief of Command of Tochache's General Police, identified as Commander "Tito", who confirms Mr. Rojas Medina was arrested and then transferred to the Armed Forces.<sup>88</sup>

**March 8, 1991:** Ms. Medina Negrón, Mr. Rojas Medina's mother, files a complaint with the Office of the Attorney General regarding her son's disappearance.<sup>89</sup>

**March 20, 1991:** The Chief of the Drug Enforcement Police sends a letter to the Prosecutor's Office indicating that on the same day Commander "Tito" confirmed Mr. Rojas Medina's arrest, he made contradicting statements denying his arrest and detention.<sup>90</sup>

**April 9, 1991:** Senator Hurtado Pozo asks the Prosecutor to investigate the disappearance of Mr. Rojas Medina.<sup>91</sup>

**April 13, 1991:** Mr. Rojas Medina's mother meets with the Commissioner of Tocache who shows her that Mr. Rojas Medina's name is not listed in the book of detainees.<sup>92</sup>

**April 15, 1991:** The Ministry of Defense issues a statement denying that Mr. Rojas Medina was transferred to the Huallaga Front Contrasubversive Base.<sup>93</sup>

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86. Terrones Silva et al. v. Peru, Report on Merits, ¶ 203.

87. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 99.

88. Terrones Silva et al. v. Peru, Report on Merits, ¶ 130.

89. *Id.* ¶ 126.

90. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 101.

91. *Id.*

92. *Id.* ¶ 102.

93. *Id.*

**May 22, 1991:** Mr. Rojas Medina's mother submits a complaint alleging that a Second Army Sergeant confirmed that her son has been detained with two other people at the Army headquarters in Chorrillos.<sup>94</sup>

**September 22, 1991:** The National Penitentiary Institute issues a statement that Mr. Rojas Medina is not one of their prisoners.<sup>95</sup>

**August 5, 1992:** The National Police Force informs the Prosecutor that they do not have record of Mr. Rojas Medina's detainment.<sup>96</sup>

**April 5, 2000:** The National Police Force concludes that the evidence does not suggest Mr. Rojas Medina was captured by police.<sup>97</sup>

**April 25, 2000:** The Prosecutor's Office refers the investigation to the police and asks them to continue taking steps to locate Mr. Rojas Medina.<sup>98</sup>

**July 11, 2000:** The Prosecution Service issues a resolution stating there is not enough evidence to determine who detained Mr. Rojas Medina and order the case be provisionally archived while the Tocache Police continue investigating.<sup>99</sup>

**August 20, 2003:** A complaint is filed with the Prosecution Service Specializing in Forced Disappearances, which states a criminal investigation was initiated in 1991 into the disappearance of Mr. Rojas Medina.<sup>100</sup> The complaint further states that the case is still at the investigation stage and there is no indication that Mr. Rojas Medina was involved in terrorism at the time of his disappearance.<sup>101</sup>

**September 16, 2004:** Mr. Rojas Medina's mother files a complaint with the Prosecution Service Specializing in Forced Disappearances,

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94. *Id.*

95. *Id.*

96. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 102.

97. *Id.* ¶ 103.

98. *Id.*

99. *Id.*

100. *Id.* ¶ 105.

101. *Id.*

Extrajudicial Executions, and the Exhumation of Clandestine Graves, for the kidnapping and forced disappearance of her son.<sup>102</sup>

**August 22, 2005:** Mr. Rojas Medina’s next of kin requests a certificate of absence resulting from a forced disappearance from the Office of the Human Rights Ombudsperson under the framework of Law 28413, which governs absences due to forced disappearances.<sup>103</sup>

**September 6, 2006:** The Office of the Human Rights Ombudsperson issues a report declaring Mr. Rojas Medina was a victim of a forced disappearance committed on January 26, 1991.<sup>104</sup> The Office states that Mr. Rojas Medina was detained by a group of police officers, taken to the police station in Tocache for several days, and then transferred to the Tocache Military Base. Since January 26, 1991, his whereabouts remain unknown.<sup>105</sup>

**February 20, 2011:** The investigation is referred to the First Provincial Corporate Criminal Prosecution Office of Moyobamba (“First Prosecutor”).<sup>106</sup>

**March 28, 2011:** The First Prosecutor Office orders an investigation into the forced disappearance of Mr. Rojas Medina under the new criminal procedure code to determine the identities of those responsible.<sup>107</sup>

**January 18, 2013:** The First Provincial Corporate Criminal Prosecution Service of Tocache decides to archive the investigation into the forced disappearance of Mr. Rojas Medina.<sup>108</sup> The Office states that despite efforts to identify the alleged perpetrators, no one has been identified in the last twenty years of preliminary investigations.<sup>109</sup>

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102. Terrones Silva et al. v. Peru, Report on Merits, ¶ 136.

103. *Id.* ¶ 128.

104. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 115.

105. *Id.*

106. *Id.* ¶ 107.

107. *Id.*

108. Terrones Silva et al. v. Peru, Report on Merits, ¶ 140.

109. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 108.

**October 10, 2016:** The Office of the Special Prosecutor for Forced Disappearances orders the reopening of the investigation into the forced disappearance of Mr. Rojas Medina.<sup>110</sup>

**April 25, 2017:** The First Prosecutor's Office refers the investigation to the National Police Force to research the forced disappearance of Mr. Rojas Medina and requires all police officers who worked in Tocache at the time of his disappearance to submit a declaration.<sup>111</sup>

**July 7, 2017:** The National Police Force issues a report concluding they are unable to determine whether Mr. Rojas Medina disappeared.<sup>112</sup>

#### 5. Facts Relating to the Disappearance of Mr. Santiago Antezana Cueto

**May 7, 1984:** Mr. Antezana Cueto travels to Manyacc to attend his father's funeral.<sup>113</sup> Mr. Antezana Cueto finds out his uncle, and Mr. Máximo Antezana Espeza is being detained by members of the Self-Defense Committee of the Village of Manyacc.<sup>114</sup> Mr. Antezana Cueto attempts to release his uncle and is subsequently detained.<sup>115</sup> The Committee members transport both men to the Peruvian Army military base in the province of Acobamba.<sup>116</sup>

**Between May 7 and May 15, 1984:** Mr. Antezana Cueto and Mr. Antezana Espeza are severely tortured and threatened by patrolmen at the military base.<sup>117</sup>

**May 15, 1984:** Mr. Antezana Espeza is released from the counterinsurgency base, leaving Mr. Antezana Cueto there alive.<sup>118</sup> Mr. Antezana Cueto is seen for the last time.<sup>119</sup>

**July 31, 1984:** Dr. José Burneo Labrín from the Legal Counsel Department of the Episcopal Commission for Social Action states that

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110. *Id.* ¶ 110.

111. *Id.* ¶ 111.

112. *Id.* ¶ 112.

113. *Id.* ¶ 118.

114. Terrones Silva et al. v. Peru, Report on Merits, ¶ 108.

115. *Id.*

116. *Id.*

117. *Id.* ¶ 109.

118. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 118.

119. Terrones Silva et al. v. Peru, Report on Merits, ¶ 107.

civilians living within Manyacc continue to report the detention and disappearances of many community members including Mr. Antezana Cueto.<sup>120</sup>

**March 19, 1985:** Mr. Antezana Cueto's family members file a complaint with the Office of the Prosecutor of the Nation requesting an investigation into the facts surrounding Mr. Antezana Cueto's detainment, and request that measures necessary to protect their personal integrity be ordered.<sup>121</sup>

**September 24, 1986:** Mr. Antezana Espeza requests that the Director of the Human Rights Office of the Public Prosecutor's Office provide protection for him and his family so that they can live peacefully in the city of La Merced.<sup>122</sup> Further, he requests that the Director inform him of any regular proceedings filed against him that would give the police permission to monitor him.<sup>123</sup> Mr. Antezana Espeza expresses his belief that arbitrary police monitoring will prevent him from continuing to file complaints against civilians and military personnel who have detained other community members from the Manyacc village, forced their disappearance, and killed them.<sup>124</sup>

**August 14, 1992:** The Provincial Prosecutor of Acobamba reports to the Special Crime Prevention Prosecutor, Human Rights Ombudsman that there are no reports about the disappearance from 1989 because their files had been burned during an insurgency attack.<sup>125</sup>

**August 17, 1992:** The Special Crime Prevention Prosecutor, Human Rights Ombudsman orders the Provincial Prosecutor of Acobamba to initiate a new investigation into the disappearance of Mr. Antezana Cueto.<sup>126</sup>

**September 11, 1993:** Mr. Antezana Espeza is killed in the province of Chanchamayo, department of Junín, after he reported that both he and

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120. Terrones Silva et al. v. Peru, Report on Merits, ¶ 110.

121. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 120.

122. Terrones Silva et al. v. Peru, Report on Merits, ¶ 117.

123. *Id.*

124. *Id.*

125. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 122.

126. *Id.*

Mr. Antezana Cueto had been detained, tortured, and Mr. Antezana Cueto had been subjected to a forced disappearance.<sup>127</sup>

**November 25, 2004:** Ms. Rosa Carcausto Paco, Mr. Antezana Cueto's wife, and a representative from the Human Rights Commission (Comisión de Derechos Humanos; "COMISEDH") file a criminal complaint with the Mixed Provincial Prosecutor of Acobamba against "Scorpion," Captain of the Peruvian Army, and other members of the Army who are responsible for Mr. Antezana Cueto's disappearance.<sup>128</sup>

**July 31, 2009:** The Provincial Prosecutor Huancavelica Supraprovisional Criminal formalizes the criminal complaint against Mr. José Antonio Esquivel Mora, Captain of the Army of the Barracks of Acobamba, who is deemed the perpetrator of the crime of the forced disappearance and torture of Mr. Antezana Cueto.<sup>129</sup>

**April 28, 2010:** Criminal proceedings against Mr. Esquivel Mora are opened.<sup>130</sup>

**December 26, 2012:** The Third National Superior Criminal Prosecutor issues a ruling which concludes Mr. Esquivel Mora is responsible for the forced disappearance and torture of Mr. Antezana Cueto.<sup>131</sup>

**December 12, 2013:** The National Criminal Chamber issues a judgment against Mr. Esquivel Mora, sentencing him to 15 years of imprisonment for the forced disappearance of Mr. Antezana Cueto in his capacity as Chief of the Military Base of Acobamba, and orders Mr. Esquivel Mora to pay a fine of the civil reparation in favor of legal heirs of the victim.<sup>132</sup>

**December 13, 2013:** The National Criminal Chamber issues an order of capture against Mr. Esquivel Mora, who is deemed a fugitive from justice.<sup>133</sup>

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127. Terrones Silva et al. v. Peru, Report on Merits, ¶ 18.

128. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 113, 123.

129. *Id.* ¶ 124.

130. *Id.*

131. *Id.* ¶ 125.

132. *Id.* ¶ 126.

133. *Id.*

**December 29, 2015:** The National Criminal Chamber orders a renewal order for the national and international arrest of Mr. Esquivel Mora.<sup>134</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

1. Events pertaining to Mr. Wilfredo Terrones Silva<sup>135</sup>

**August 28, 1992:** The Commission receives a petition on behalf of Mr. Terrones Silva.<sup>136</sup>

**April 2004:** The Commission requests updates from both parties.<sup>137</sup>

**May 31, 2005:** The Commission decides to postpone ruling on admissibility until a discussion on merits can occur.<sup>138</sup>

2. Events pertaining to Ms. Teresa Díaz Aparicio

**August 28, 1992:** Mr. Rodolfo Asencios Martel, Mr. Federico Díaz Aparicio, and the Asociación Pro Derechos Humanos (“APRODEH”) submit a petition on behalf of Ms. Teresa Díaz Aparicio to the Commission.<sup>139</sup>

**February 10, 1993:** The State argues the petition inadmissible because Ms. Teresa Díaz Aparicio’s brother did not file a complaint domestically until 2003.<sup>140</sup> The State alleges the alleged forced disappearance has been under investigation since the complaint was filed in 2003.<sup>141</sup>

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134. *Id.* ¶ 127.

135. No admissibility report available.

136. Terrones Silva et al. v. Peru, Report on Merits, ¶ 9.

137. *Id.*

138. *Id.*

139. Teresa Díaz Aparicio et al. v. Peru, Report on Admissibility, Report No. 163/11, Inter-Am. Comm’n H.R., Case No. 11.054, ¶ 1 (November 2, 2011).

140. *Id.* ¶ 13.

141. *Id.* ¶ 14.

Furthermore, due to lack of evidence, the Prosecutor assigned to the case ordered it closed.<sup>142</sup> Thus, domestic remedies are exhausted.<sup>143</sup>

**November 2, 2011:** The Commission issues Admissibility Report No. 163/11, which declares the petition admissible.<sup>144</sup> The Commission finds the State violated rights provided in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention in connection with obligations in Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, and Articles 1 (Obligation to Adopt Measures) and 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons.<sup>145</sup>

The Commission finds the State failed to exhaust domestic remedies. The State was aware of Ms. Teresa Díaz Aparicio's disappearance on September 2, 1992.<sup>146</sup> The facts available to the State at that time constituted a criminal act, and thus the investigation should have been instituted by the State on its own initiative.<sup>147</sup>

### 3. Events pertaining to Ms. Cory Clodolia Tenicela Tello

**June 10, 2003:** Ms. Amadea Tello de Tenicela and Ms. Norma Juana Tenicela submit a petition on behalf of Ms. Tenicela Tello to the Commission.<sup>148</sup>

**August 10, 2010:** The State argues the petition inadmissible because Ms. Tenicela Tello's alleged forced disappearance is currently under investigation.<sup>149</sup> The State indicates that the complexity of the facts alleged has resulted in a longer investigatory stage.<sup>150</sup> Therefore, the State argues that domestic remedies have not be exhausted.<sup>151</sup>

142. *Id.* ¶ 17.

143. *Id.*

144. *Id.* ¶ 3.

145. Teresa Díaz Aparicio et al. v. Peru, Report on Admissibility, "Decides" ¶ 1.

146. *Id.* ¶ 25.

147. *Id.* ¶ 24.

148. Cory Clodolia Tenicela Tello et al. v. Peru, Report on Admissibility, Report No. 108/11, Inter-Am. Comm'n H.R., Case No. 12.823, ¶ 1 (July 22, 2011).

149. *Id.* ¶ 2.

150. *Id.*

151. *Id.*

**July 22, 2011:** The Commission issues Admissibility Report No. 108/11, which declares the petition admissible.<sup>152</sup> The Commission finds the State violated rights provided in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention in connection with obligations in Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, and Articles 1 (Obligation to Adopt Measures) and 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearance of Persons.<sup>153</sup>

The Commission states that the lapse of nearly 18 years since Ms. Tenicela Tello's disappearance is sufficient to conclude an unwarranted delay in the investigation and final judgment of the case, therefore domestic remedies have not been exhausted.<sup>154</sup>

#### 4. Events pertaining to Mr. Néstor Rojas Medina<sup>155</sup>

**November 12, 1998:** The Commission receives a petition on behalf of Mr. Rojas Medina.<sup>156</sup>

**December 2004:** The Commission requests updates from both parties.<sup>157</sup>

**November 9, 2015:** The Commission decides to postpone ruling on admissibility until a discussion on merits can occur.<sup>158</sup>

#### 5. Events pertaining to Mr. Santiago Antezana Cueto

**November 12, 1998:** The National Committee of Family Members of Detainees, Disappeared Persons, and Refugees-Peru (Comite Nacional de Familiares de Detenidos Desaparecidos, Refugiados- Peru; "CONFADER-Peru"), and the Human Rights Commission (Comisión de Humanos; "COMISEDH") submits a petition on behalf of Mr. Antezana Cueto to the Commission.<sup>159</sup>

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152. *Id.* ¶ 3.006

153. *Id.* "Decides" ¶ 1.

154. Cory Clodolia Tenicela Tello et al. v. Peru, Report on Admissibility, ¶ 24.

155. No admissibility report available.

156. Terrones Silva et al. v. Peru, Report on Merits, ¶ 10.

157. *Id.*

158. *Id.*

159. Santiago Antezana Cueto et al. v. Peru, Report on Admissibility, Report No. 3/12, Inter-Am. Comm'n H.R., Case No. 12.224, ¶ 1 (January 27, 2012).

**March 14, 2000:** The State argues the petition is inadmissible because several years have lapsed and the petitioners fail to present specific facts regarding the criminal investigation of the alleged forced disappearance of Mr. Santiago Antezana Cueto.<sup>160</sup>

**January 27, 2012:** The Commission issues Admissibility Report No. 3/12, which declares the petition admissible.<sup>161</sup> The Commission finds the State violated rights provided in Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.<sup>162</sup> The Commission states that although the arrest and alleged torture of Mr. Antezana Cueto occurred in May 1984, the effects of forced disappearances, and the States duty to respond to acts of torture, are ongoing in nature.<sup>163</sup> Furthermore, the facts indicate that the State failed to investigate the alleged forced disappearance of Mr. Antezana Cueto for nearly 20 years.<sup>164</sup>

**April 13, 2016:** The Commission joins the five cases because they focus on similar incidents of identical patterns of conduct.<sup>165</sup> The Commission issues the Admissibility and Merits Report No. 5/16, which declares the petitions admissible.<sup>166</sup>

The State asks the Commission to find the petitioners claims meritless because the State conducted in-depth investigations in each case and concluded that the cases should be closed.<sup>167</sup>

The Commission, having previously issued admissibility reports in the cases involving Ms. Teresa Díaz Aparicio, Ms. Tenicela Tello, and Mr. Antezana Cueto, only addresses the State's admissibility arguments as they pertain to Mr. Terrones Silva and Mr. Rojas Medina, and find that more than 20 years have passed since the disappearances.<sup>168</sup> During this time, the State has neither determined their whereabouts, nor punished

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160. *Id.* ¶¶ 2, 4.

161. *Id.* ¶ 3.

162. *Id.* "Decides" ¶ 1.

163. *Id.* ¶ 21.

164. *Id.* ¶ 27.

165. Terrones Silva et al. v. Peru, Report on Merits, ¶ 12.

166. *Id.* ¶ 4.

167. *Id.* ¶ 31.

168. *Id.* ¶ 41.

those responsible.<sup>169</sup> Thus, the State failed to exhaust domestic remedies.<sup>170</sup>

The Commission finds the State is responsible for violating the rights provided in Articles 3 (Right to Juridical Personality), 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 7(1) (Right to Personal Liberty and Security), 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal, and 25(1) (Right of Recourse Before a Competent Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, Article 1 (Obligation to Adopt Measures, and 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearances of Persons, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment, and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. Terrones Silva, Ms. Teresa Díaz Aparicio, Mr. Tenicela Tello, Mr. Rojas Medina, and Mr. Antezana Cueto.<sup>171</sup>

In light of the foregoing violations, the Commission recommends the State: (1) perform a reasonably timed, thorough and impartial investigation aimed at locating the five missing victims; (2) conduct domestic procedures for the crime of forced disappearance and identify and punish those responsible; (3) make adequate reparations to the family members of the five victims; (4) adopt stronger methods of investigating forced disappearances which occur during internal conflict; (5) publicly recognize the State's responsibility for the violations found in the instant case; and (6) reform the criminal code to ensure the definition of forced disappearance of individuals is aligned with Inter-American standards.<sup>172</sup>

### *B. Before the Court*

**November 9, 2016:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>173</sup>

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169. *Id.*

170. *Id.*

171. Terrones Silva et al. v. Peru, Report on Merits, ¶ 227.

172. *Id.* ¶¶ 228, 229.

173. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

**July 5, 2017:** The State raises three preliminary objections.<sup>174</sup> The State's preliminary objections argue that: (1) domestic remedies have not been exhausted;<sup>175</sup> (2) the Court may not retroactively apply the Inter-American Convention on Forced Disappearance of Persons to events which occurred prior to Peru's ratification of said instrument;<sup>176</sup> (3) the Court may not retroactively apply the Inter-American Convention to Prevent and Punish Torture to events which occurred prior to Peru's ratification of said instrument.<sup>177</sup>

### 1. Violations Alleged by Commission<sup>178</sup>

To the detriment of Mr. Terrones Silva, Ms. Teresa Díaz Aparicio, Mr. Antezana Cueto, Mr. Rojas Medina, and Ms. Tenicela Tello:

Article 3 (Right to Juridical Personality)

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7(1) (Right to Personal Liberty and Security)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention on Human Rights

Article 1 (Obligation to Adopt Measures)

Article 3 (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearances of Persons

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

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174. *Id.* ¶ 16.

175. *Id.* ¶ 17.

176. *Id.* ¶ 24.

177. *Id.* ¶ 30.

178. Terrones Silva et al. v. Peru, Report on Merits, ¶ 227.

To the detriment of the victims' family members:<sup>179</sup>

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention on Human Rights

## 2. Violations Alleged by Representatives of the Victims<sup>180</sup>

Same Violations Alleged by the Commission.

### III. MERITS

#### A. *Composition of the Court*<sup>181</sup>

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice-President

Humberto Antonio Sierra Porto, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

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179. Terrones Silva et al. v. Peru, Report on Merits, n.1. The Commission appointed family members for each victim as follows: Ms. Guillermina Frida Landázuri Gómez, Mr. Alberto Díaz Uriarte, Ms. Graciela Aparicio Pastor, Mr. Federico Díaz Aparicio, and Mr. Roberto Levi Aparicio served as representatives of Mr. Terrones Silva; Ms. Amadea Tello Barrier, Ms. Norma Juana Tenicela Tello, Mr. Washington Tenicela Tello, and Ms. Yorka Jara Tenicela served as representatives for Ms. Tenicela Tello; Ms. Marcelina Medina Negrón, Mr. Leopold Rojas Manuyama, Mr. Abelardo Collantes Quiroz, Ms. Tania Collantes Medina, Ms. Faustina Collantes Quiroz, and Ms. Luzmilla Collantes Quiroz served as representatives for Mr. Néstor Rojas Medina; and Ms. Rosa Carcausto Paco, Mr. Ermilio Antezana Cueto, Mr. Maximum Antezana Espeza, and Ms. Ofelia Antezana Torre served as representatives for Mr. Santiago Antezana Cueto.

180. *Id.* ¶ 6 n.5. On January 27, 2017, the Asociación Pro Derechos Humanos (“APRODEH”), the Human Rights Commission (Comisión de Humanos; “COMISEDH”), and the Legal Defense Institute (el Instituto de Defensa Legal; “IDL”) notified the Court of their representation of each victim and their families.

181. Judge Elizabeth Odio Benito, for reasons of force majeure, did not participate in the deliberation of the Judgment. *See generally id.* For undisclosed reasons, Judge Ricardo Pérez Manrique did not participate in the deliberation.

*B. Decision on the Merits*

**September 26, 2018:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>182</sup>

The Court found unanimously:

To dismiss all three of Peru's preliminary objections,<sup>183</sup> because:

*First, the State argued not all domestic remedies were exhausted.<sup>184</sup> The Court rejected this argument because the State did not meet the standards necessary to argue lack of exhaustion of domestic remedies, such as stating which remedies were exhausted or in progress and why those remedies were effective.<sup>185</sup>*

*Second, the State argues that under the principle of non-retroactivity the Court may not apply the Inter-American Convention on Forced Disappearance of Persons ("CIDFP") to events which occurred prior to Peru's ratification of said instrument.<sup>186</sup> The Court has repeatedly held that the CIDFP is applicable to violations that are permanent in nature even when the events occurred prior to ratification.<sup>187</sup> Here, the forced disappearance of persons is continuous and to find the CIDFP inapplicable deprives the victims of their right to access justice.<sup>188</sup>*

*Third, the State argues that under the principle of non-retroactivity the Court may not apply the Inter-American Convention to Prevent and Punish Torture ("CIPST") to events which occurred prior to Peru's ratification of said instrument.<sup>189</sup> The Court applies the same reasoning in dismissing this objection as the above reasoning for the CIDFP.<sup>190</sup>*

The Court found unanimously that Peru had violated:

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182. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

183. *Id.* "Decides," ¶¶ 1-3.

184. *Id.* ¶ 17.

185. *Id.* ¶ 22.

186. *Id.* ¶ 24.

187. *Id.* ¶ 28.

188. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 28.

189. *Id.* ¶ 30.

190. *Id.* ¶ 33.

Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life), 3 (Right to Juridical Personality) all in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, as well as in relation to Article 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Terrones Silva, Ms. Teresa Díaz Aparicio, Ms. Tenicela Tello, Mr. Rojas Medina, and Mr. Antezana Cueto,<sup>191</sup> because:

*The Court determined that at the time of Mr. Terrones Silva's disappearance, Peru was involved in a period of armed conflict and used the practice of forced disappearances of terrorist group members, collaborators, and supporters in its effort to fight terrorism.<sup>192</sup> Mr. Terrones Silva, was identified by the State as a member of the terrorist group, the Shining Path, and had previously been incarcerated for alleged acts of terrorism prior to his disappearance.<sup>193</sup> Based on the foregoing, the Court concluded that Mr. Terrones Silva's background and activity leading up to his disappearance made him highly vulnerable to the counter-terrorism State policies during the early nineties.<sup>194</sup> Furthermore, the State was practicing systematic forced disappearances of individuals suspected of belonging to or sympathizing with the Shining Path.<sup>195</sup> The Court noted that on the day of Mr. Terrones Silva's disappearance, witnesses at the Castro Castro prison saw him arrive at the gate of the prison, but did not see him leave.<sup>196</sup> The Court therefore concluded that Mr. Terrones Silva was deprived of his liberty, and integrity by state agents.<sup>197</sup>*

*The Court took notice of a newspaper article that quoted a former State agent, who had confirmed that these State actors massacred members of the Shining Path, placed their remains in bags, and disposed of their*

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191. *Id.* "Declares," ¶ 4.

192. *Id.* ¶ 141.

193. *Id.* ¶ 143.

194. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 145.

195. *Id.*

196. *Id.* ¶ 143.

197. *Id.* ¶¶ 143, 146.

remains at sea.<sup>198</sup> The former State agent also stated that Mr. Terrones Silva had been subject to these practices.<sup>199</sup> Mr. Terrones Silva's son corroborated the newspaper article in a separate statement where he confirmed a person in the Castro Castro Prison had indicated that his father had been tortured, and killed, and that his body was sectioned by a saw, and disposed of at sea.<sup>200</sup> Thus, Mr. Terrones Silva was arbitrarily deprived of his life, and subject to torture at the hands of state agents.<sup>201</sup>

Lastly, the Court reasoned that the State had known about Mr. Terrones Silva's disappearance since August 1992, and over the next twenty-six years, never discovered his whereabouts, nor concluded its investigation into what actually occurred.<sup>202</sup> In fact, the State adamantly denied its involvement in Mr. Terrones Silva's disappearance and instead, presumed that he went into hiding.<sup>203</sup> Thus, the State deprived Mr. Terrones Silva of juridical personality by failing to provide adequate legal remedies or acknowledge his forced disappearance.<sup>204</sup>

The Court held that the disappearance of Ms. Teresa Díaz Aparicio mirrored the systematic widespread practice of forced disappearances of University Professors.<sup>205</sup> At the time of her disappearance multiple other professors at the Universidad Mayor de San Marcos who were accused of being affiliated with Shining Path later disappeared.<sup>206</sup> Ms. Teresa Díaz Aparicio was not only a university professor, but also was previously investigated and detained for her affiliation with Shining Path.<sup>207</sup> Furthermore, over the twenty-six years since Ms. Teresa Díaz Aparicio's disappearance the State has failed to locate her whereabouts.<sup>208</sup> Despite testimony and evidence collected throughout the investigation, the State has refused to recognize Ms. Teresa Díaz Aparicio's detention by State actors and instead claimed she "went into

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198. *Id.* ¶ 144.

199. *Id.*

200. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 144.

201. *Id.* ¶ 146.

202. *Id.* ¶ 144.

203. *Id.*

204. *Id.* ¶ 146.

205. *Id.* ¶ 148.

206. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 148.

207. *Id.*

208. *Id.* ¶ 150.

hiding”.<sup>209</sup> Due to the multi-offensive nature of the forced disappearance of Ms. Teresa Díaz Aparicio, the Court concluded the State was therefore responsible for each of the human rights violations.<sup>210</sup>

The Court held that Ms. Tenicela Tello went missing during a period in which more than 100 students at the UNCP disappeared or were killed.<sup>211</sup> In fact, in 1992 when Ms. Tenicela Tello went missing the disappearance of university students was at its height.<sup>212</sup> Between 1989 and 1993 armed forces at the UNCP systematically implemented violent tactics which included the detention, kidnapping, and killing of students and teachers suspected of belonging to terrorist groups.<sup>213</sup> Thus, based on the circumstances during the period of time Ms. Tenicela Tello went missing, the Court concluded she was a victim of forced disappearance.<sup>214</sup>

In addition, the Court concluded that there was ample evidence pointing to State agents as the perpetrators of Ms. Tenicela Tello’s disappearance.<sup>215</sup> First, Ms. Tenicela Tello was one of thirty-two victims of aggravated homicide and kidnapping named in a September 2013 ruling issued by the First Superior Criminal Prosecution Service.<sup>216</sup> The ruling held that two State actors were responsible for detaining Ms. Tenicela Tello on October 2, 1992.<sup>217</sup> Since that date she has been registered as missing.<sup>218</sup> Second, the Court noted the Third National Criminal Court’s ruling which charged retired Army Colonel “LDP” with the aggravated kidnapping of Ms. Tenicela Tello.<sup>219</sup> Lastly, Ms. Tenicela Tello’s mother stated that in 1992 during a search of her home a police lieutenant implied that her daughter was detained by state agents.<sup>220</sup> Furthermore, the Court noted that the State had been aware of Ms. Tenicela Tello’s disappearance for almost twenty six years, but failed

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209. *Id.*

210. *Id.* ¶ 152.

211. *Id.* ¶ 154.

212. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 154.

213. Terrones Silva et al. v. Peru, Report on Merits, ¶ 149.

214. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 156.

215. *Id.* ¶ 155.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 155.

to determine her whereabouts.<sup>221</sup> Based on the foregoing the Court held there was ample circumstantial evidence to suggest a massive and systematic violation of Ms. Tenicela Tello's fundamental rights.<sup>222</sup>

The Court considered a multitude of evidence which confirmed that police had arrested Mr. Rojas Medina in 1991 and later took him to the Tocache Military Base.<sup>223</sup> The Court cited the 2006 Office of the Human Rights Ombudsperson report as evidence which strongly corroborated Mr. Rojas Medina's forced disappearance.<sup>224</sup> The report based its findings on relatives testimony and the political climate at the time of Mr. Rojas Medina's disappearance to conclude that Mr. Rojas Medina was arrested by a group of police officers on January 26, 1991, taken to the Tocache Police Station, transferred to the Tocache Military base, and never seen or heard from again.<sup>225</sup> Furthermore, the Court noted that Commander "Tito" confirmed Mr. Rojas Medina was detained by State actors and deprived of liberty.<sup>226</sup> Additionally, Mr. Rojas Medina's arrest occurred during a period when the systematic and widespread practice of forced disappearances were implemented by the State in their ongoing fight against terrorism.<sup>227</sup> The Court concluded that over twenty-seven years have elapsed since the initial complaint was filed and the State has failed to provide any information on Mr. Rojas Medina's whereabouts. Based on the foregoing, the Court concluded the State was therefore responsible for the forced disappearance and subsequent human rights violations of Mr. Rojas Medina.<sup>228</sup>

The Court found sufficient evidence which confirmed that on May 7, 1984, Mr. Antezana Cueto was arrested, detained, and admitted to the Military Base of Acobamba where he was deprived of liberty and subjected to torture.<sup>229</sup> The Court considered: (1) the December 12, 2013 statement in the Judgement of the National Criminal Chamber, which described Ms. Antezana Cueto's detention and transfer and confirmed that the State was responsible for his arrest, detainment, torture, and

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221. *Id.* ¶ 156.

222. *Id.*

223. *Id.* ¶ 160.

224. *Id.* ¶ 159.

225. *Id.* ¶ 160.

226. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 161.

227. *Id.* ¶ 163.

228. *Id.* ¶ 164.

229. *Id.* ¶ 170.

*forced disappearance; and (2) a statement made by Mr. Antezana Cueto's uncle who witnessed the torture of Mr. Antezana Cueto.<sup>230</sup> Furthermore, the Court considered Mr. Antezana Cueto's wife, Ms. Carcausto Paco's testimony, which alleged that in 1992 the State informed her all documentation regarding her husband's disappearance was destroyed in an insurgency attack, as further evidence of the State's failure to investigate the forced disappearance.<sup>231</sup>*

*The State affirmed Mr. Antezana Cueto's forced disappearance in the National Criminal Chamber's 2013 judgment which held Mr. Esquivel Mora responsible and sentenced him to 15 years in prison.<sup>232</sup> Although the State acknowledged international responsibility for the forced disappearance, and carried out civil reparation to Mr. Antezana Cueto's relatives, the Court declined to rule that the State's illegal and continuous acts of forced disappearance had ceased.<sup>233</sup> The Court reasoned that the act of forced disappearance is ongoing, and does not cease until the State locates the victim's remains.<sup>234</sup> More than thirty-four years had passed since Mr. Antezana Cueto's disappearance and the State had yet to locate him and return his remains to his family.<sup>235</sup> Thus, the crime of Mr. Antezana Cueto's forced disappearance had not ceased.<sup>236</sup>*

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, as well as in relation to Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Terrones Silva and his relative Ms. Guillermina Frida Landázuri Gómez; Ms. Teresa Díaz Aparicio and her relatives, Ms. Graciela Aparicio Pastor and Mr. Federico Díaz Aparicio; Mr. Antezana Cueto and his relatives, Ms. Rosa Carcausto Paco, Mr. Ermilio Antezana Cueto, and Ms. Ofelia Antezana Torre; Mr. Rojas Medina and his relatives, Ms. Marcelina Medina Negrón and Ms. Tania Collantes

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230. *Id.* ¶ 173.

231. *Id.*

232. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 165.

233. *Id.* ¶ 169.

234. *Id.*

235. *Id.*

236. *Id.*

Medina; and Ms. Tenicela Tello and her relative, Ms. Amadea Felipa Tello de Tenicela,<sup>237</sup> because:

*The Court first recognized that the right of access to justice includes the right to know the truth about what happened to each victim and to punish those responsible within a reasonable amount of time.<sup>238</sup> The Court explained that the judicial process ends when a final judgement has been issued; however, the Court also considered the amount of time that elapsed prior to final judgement, and noted that any prolonged delay could constitute a violation of the judicial guarantees.<sup>239</sup>*

*The Court determined investigations into Mr. Terrones Silva's disappearance were opened shortly after the initial complaints were filed; however, the investigations remained in their early stages, open, and unresolved for over twenty-six years.<sup>240</sup> Thus, the Court reasoned that the investigation excessively exceeded a reasonable period and constituted a violation of judicial guarantees.<sup>241</sup>*

*In the case of Ms. Teresa Díaz Aparicio, the Court reiterated that prolonged delays in case investigations constituted a violation of judicial guarantees. The State first learned about Ms. Teresa Díaz Aparicio's disappearance sixteen years before they initiated an investigation, which the Court considered to be an excessive, unreasonable delay.<sup>242</sup> Furthermore, twenty-six years have elapsed since Ms. Teresa Díaz's disappearance and the investigation remains in its early stages.<sup>243</sup> Thus, the State's delay violated Ms. Teresa Díaz Aparicio's judicial guarantees.*

*The Court noted that in the twenty-six years since the State first acknowledged Ms. Tenicela Tello and the thirty-two other individual's disappearances, it had yet to issue a final judgment.<sup>244</sup> Thus, this prolonged delay violated Ms. Tenicela Tello's judicial guarantees.<sup>245</sup>*

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237. *Id.* "Declares" ¶ 5.

238. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 185.

239. *Id.* ¶ 186.

240. *Id.* ¶ 191.

241. *Id.* ¶ 194.

242. *Id.* ¶ 191.

243. *Id.* ¶ 191.

244. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 189.

245. *Id.* ¶ 189.

*The Court noted that the State became aware of Mr. Antezana Cueto's disappearance in 1985, but did not issue its final judgement until 2013, more than thirty-four years after the execution of investigations.<sup>246</sup> Furthermore, the defendant charged in Mr. Antezana Cueto's disappearance remained at large, and the State had not taken the necessary steps to capture the defendant.<sup>247</sup> Thus, the State failed to punish those responsible in a reasonable time and therefore violated Mr. Antezana Cueto's judicial guarantees.<sup>248</sup>*

*The Court found that more than twenty-six years have elapsed since the State first became aware of the disappearance of Mr. Rojas Medina, and although investigations had been opened, the investigations were still in the early stages.<sup>249</sup> The Court reasoned the prolonged delay was unreasonable and constituted a violation of judicial guarantees.<sup>250</sup>*

*The Court has long held that in the context of forced disappearances, the state must initiate a criminal investigation and charge those responsible.<sup>251</sup> A state's duty to investigate not only includes the state conduct a thorough and impartial investigation, but also requires the determination of the victim's whereabouts.<sup>252</sup> Here, the Court held the State failed to identify, prosecute, and punish those responsible in the cases of Mr. Terrones Silva, Ms. Teresa Díaz Aparicio, Mr. Rojas Medina, and Ms. Tenicela Tello.<sup>253</sup>*

*In the case of Antezana Cueto, the Court explained that the obligation to investigate not only includes identifying and prosecuting those responsible, but also requires the state comply with any sentence listed in a final judgement.<sup>254</sup> The Court noted that although the State charged Mr. Esquivel Mora with Mr. Antezana Cueto's forced disappearance, the State failed to take the necessary steps to ensure his capture and take him into custody.<sup>255</sup> Furthermore, the Court held that Mr. Antezana Cueto's*

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246. *Id.* ¶ 188.

247. *Id.*

248. *Id.* ¶ 192.

249. *Id.* ¶ 190.

250. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 190.

251. *Id.* ¶ 195.

252. *Id.* ¶ 195.

253. *Id.* ¶ 196.

254. *Id.* ¶ 211.

255. *Id.* ¶ 212.

*relatives judicial guarantees were violated because the State failed to enforce the civil compensation ordered in the judgment.*<sup>256</sup>

*The Court held that the State violated the victim's judicial guarantees because the State failed to thoroughly carry out investigations with the due diligence required to identify, process and, punish those responsible.*<sup>257</sup>

*The Court reiterated that judicial guarantees in the context of forced disappearances include the state's duty to return the remains of the victims to their next of kin.*<sup>258</sup> *The state must coordinate with all relevant national agencies to determine victim's whereabouts.*<sup>259</sup> *Thus, any State official who becomes aware of the possibility of a forced disappearance must report the act immediately and begin investigations as soon as possible.*<sup>260</sup> *Furthermore, in order for the investigations to be carried out with due diligence, the various state agencies must communicate with one another to ensure all inquiries are thorough and effective.*<sup>261</sup> *Here, the State's investigations into the five victim's forced disappearances were sporadic in nature, and in many instances, the State repeated information that it had already obtained without making efforts to discover any new information.*<sup>262</sup> *In fact, in all five cases that State failed to determine the whereabouts of the victim.*<sup>263</sup> *Thus, the five victim's relatives were unable to bury and grieve their loved ones.*<sup>264</sup> *Based on the foregoing, the State failed to implement the necessary measures to locate the remains of the victims and therefore violated the relatives judicial guarantees.*<sup>265</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, and Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Obligation to Take

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256. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 213.

257. *Id.* ¶ 203.

258. *Id.* ¶ 207.

259. *Id.* ¶ 204.

260. *Id.* ¶ 195.

261. *Id.* ¶¶ 203-204.

262. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 204.

263. *Id.* ¶ 206.

264. *Id.* ¶ 203.

265. *Id.* ¶ 206.

Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment), and Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Antezana Cueto's relatives, Ms. Rosa Carcausto Paco, Mr. Ermilio Antezana Cueto, and Ms. Ofelia Antezana Torre,<sup>266</sup> because:

*The Court analyzed the Inter-American Convention against Torture and concluded that there were two situations that trigger a State's duty to investigate: (1) where it was presented with a complaint, and (2) where there was reason to believe that an act of torture has been committed in the State's jurisdiction.<sup>267</sup> The Court determined the duty to investigate was expressly a State's obligation derived from international law and could not be discarded or altered by any internal State acts.<sup>268</sup> If any acts of torture, inhuman, or degrading treatment were indicated, a State would have to immediately initiate an impartial, independent, and thorough investigation to determine the nature and origin of the acts, and identify, process, and punish those found to be responsible.<sup>269</sup> The Court concluded the State failed to investigate the alleged acts of torture regarding Mr. Antezana Cueto.<sup>270</sup> The State was aware of Mr. Antezana Cueto's alleged torture and disappearance since the beginning of 1986, but no evidence shows that the State ever began an investigation into such acts.<sup>271</sup>*

Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Terrones Silva's relative, Mr. Guillermina Frida Landázuri Gómez; Ms. Teresa Díaz Aparicio's relatives, Ms. Graciela Aparicio Pastor, Mr. Federico Díaz Aparicio, and Mr. Roberto Levi Aparicio; Ms. Tenicela Tello's relatives, Ms. Amadea Felipa Tello de Tenicela, Ms. Norma Juana Tenicela Tello, and Mr. Zenobio Washington Tenicela Tello; Mr. Rojas Medina's family, Ms. Marcelina Medina Negrón, Ms. Tania Collantes Medina; and Mr.

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266. *Id.* "Declares" ¶ 6.

267. *Id.* ¶ 207.

268. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 207.

269. *Id.*

270. *Id.* ¶ 209.

271. *Id.* ¶ 209.

Antezana Cueto's relatives, Ms. Rosa Carcausto Paco, Mr. Ermilio Antezana Cueto and Ms. Ofelia Antezana Torre,<sup>272</sup> because:

*The Court has long held that when an individual's family member is a victim of a forced disappearance that individuals right to mental and moral integrity may be violated.<sup>273</sup> Victim's relatives experience severe emotional anguish which is often amplified by the State's refusal to provide information about the victims' whereabouts or to conduct an effective investigation to clarify what happened.<sup>274</sup> The Court distinguished that there is a rebuttable presumption ("juris tantum") that a victim's forced disappearance causes extreme suffering to the victims' mothers and fathers, daughters and sons, spouses, partners, permanent companions, and brothers and sisters.<sup>275</sup> The Court applied this rebuttable presumption of suffering regarding the violation of personal integrity to: (1) Mr. Terrones Silva's wife;<sup>276</sup> (2) Ms. Teresa Díaz Aparicio's mother and brothers;<sup>277</sup> (3) Ms. Tenicela Tello's mother, sister, and brother;<sup>278</sup> (4) Mr. Rojas Medina's mother and sister;<sup>279</sup> and (5) Mr. Antezana Cueto's wife and brother.<sup>280</sup>*

*In the case of Ms. Tenicela Tello, the Court did not apply the juris tantum presumption regarding the violation of personal integrity as it pertained to Ms. Tenicela Tello's niece, Ms. Yorcka Silvia Jara Tenicela.<sup>281</sup> The Court found no evidence that Ms. Jara Tenicela had suffered due to the disappearance of Ms. Tenicela Tello.<sup>282</sup> The Court further reasoned that if the victim was not a direct relative of the missing person, he or she was required to prove they suffered as a result of the disappearance.<sup>283</sup> Ms. Jara Tenicela failed to meet this burden.<sup>284</sup>*

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272. *Id.* "Declares" ¶ 7.

273. *Id.* ¶ 226.

274. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 226.

275. *Id.*

276. *Id.* ¶ 228.

277. *Id.* ¶ 232.

278. *Id.* ¶ 209.

278. *Id.* ¶ 231.

279. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 233.

280. *Id.* ¶ 227.

281. *Id.*

282. *Id.*

283. *Id.* ¶ 231.

284. *Id.*

Similarly, in the case of Mr. Antezana Cueto the Court concluded that Ms. Ofelia Antezana Torre, Mr. Antezana Cueto's cousin, was not a direct family member and therefore was required to prove she suffered as a result of Mr. Antezana Cueto's disappearance.<sup>285</sup> The Court noted Ms. Antezana Torre's statement rendered by affidavit which described how she had neglected her own family in the years that she searched for justice.<sup>286</sup> Her neglect, and severe grief negatively affected her children.<sup>287</sup> Furthermore, as a result of Ms. Antezana Torre's search for Mr. Antezana Cueto, State actors had accused her of being a terrorist.<sup>288</sup> Thus Ms. Antezana Torre she lived in constant fear that she was going to meet the same fate as her cousin.<sup>289</sup> Furthermore, Ms. Yovana Pérez Clara provided an expert opinion which stated that in the months and years following Mr. Antezana Cueto's disappearance, Ms. Antezana Torre suffered from moderate to severe anxiety and depression, nightmares, nocturnal enuresis, and a disruption in her family dynamic.<sup>290</sup> Based on the foregoing Ms. Antezana Torre met the heightened standard of proof to show she suffered damages to her personal integrity as a result of Mr. Antezana Cueto's forced disappearance.<sup>291</sup>

The Court declined, however, to extend the *juris tantum* presumption to Mr. Antezana Cueto's uncle, Mr. Antezana Espeza, because Mr. Antezana Espeza failed to provide any specific details regarding the suffering that he endured as a result of Mr. Antezana Cueto's disappearance.<sup>292</sup>

The Court found unanimously that Peru had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention,<sup>293</sup> because:

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285. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 228.

286. *Id.* ¶ 228.

287. *Id.*

288. *Id.* ¶ 228.

289. *Id.* ¶ 228.

290. *Id.* ¶ 229.

291. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 229.

292. *Id.* ¶ 230.

293. *Id.* "Declares" ¶ 8.

The Court noted that neither the State nor the Commission specified whether the referred criminal classification of the Supreme Court of Justice Agreement played a role in the investigations that were carried out for the disappearances of Mr. Terrones Silva, Ms. Teresa Díaz Aparicio, Ms. Tenicela Tello, Mr. Rojas Medina, or Mr. Antezana Cueto.<sup>294</sup> The Court explained that the allegations were presented generically, and because the Court did not review national standards in the abstract, it could not issue an analysis on compliance with the American Convention on Human Rights.<sup>295</sup>

### C. Concurring Separate Opinion of Judge Eduardo Vio Grossi

Judge Vio Grossi held the Court correctly dismissed the preliminary exception for failure to exhaust domestic remedies.<sup>296</sup> In this case, the Judgment stated that the State failed to identify specific domestic remedies in all five cases.<sup>297</sup> Additionally, the State did not indicate which remedies were adequate and effective, and only indicated that there were ongoing investigations.<sup>298</sup> Therefore, the previous exception exhaustion of domestic remedies brought by the requested State was dismissed.<sup>299</sup> However, the Commission's findings cannot rely on evidence based on events that occurred after the case's admissibility stage.<sup>300</sup>

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

### A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

#### 1. Judgment as a Form of Reparation

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294. *Id.* ¶ 219.

295. *Id.*

296. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Concurring Separate Opinion of Judge Vio Grossi, Inter-Am Ct. H.R. (ser. C) No. 360, ¶ 1 (Sept. 26, 2018).

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

The Court noted that the Judgment itself is a form of reparation.<sup>301</sup>

## 2. Investigate Acts of Forced Disappearance and Identify, Prosecute, and Punish those Responsible

The Court ordered the State must continue its investigations necessary to identify, judge, and punish those responsible for forced disappearances of each victim.<sup>302</sup> Furthermore, the State must fulfill these obligations according to the standards established by the Court, and complete such obligations within a reasonable amount of time.<sup>303</sup>

The Court also ordered the State must perform all necessary procedures in the investigation into the identity and punishment of anyone responsible for the forced disappearance and torture of Mr. Antezana Cueto.<sup>304</sup> The Court required the State must fulfill this obligation according to the standards established by the Court.<sup>305</sup>

The State must, with due diligence, adopt necessary measures to comply with the judgment issued by the National Criminal Chamber on December 12, 2013, which convicted Mr. Esquivel Mora for the forced disappearance of Mr. Antezana Cueto, but whose execution was still pending.<sup>306</sup>

The Court held that the State must make an exhaustive search effort to locate the whereabouts of each victim, and these searches must be rigorously and systematically carried out within a reasonable amount of time.<sup>307</sup> Moreover, the State must keep victims' relatives informed of the progress.<sup>308</sup>

The State must identify the victim's remains and deliver them to their family members as soon as possible at no cost to the victims' relatives.<sup>309</sup> Furthermore, the State must cover all funeral expenses for the victim and family members where appropriate.<sup>310</sup>

The Court ordered the State provide all victims and their families full access and ability to act at every stage of the investigation and

301. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Resolution Points," ¶ 9.

302. *Id.* ¶ 10.

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.* ¶ 245.

307. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Resolution Points," ¶ 12.

308. *Id.* ¶ 247.

309. *Id.* ¶ 248.

310. *Id.*

prosecution of those responsible for the crimes of forced disappearance and torture.<sup>311</sup> The Court also ordered the State publish all results of the corresponding processes for the Peruvian public and identify those responsible for the crimes of the State.<sup>312</sup>

### 3. Psychological Treatment and Rehabilitation Measures

The Court ordered the State provide victims' next of kin with free psychological treatment within six months of the Judgment.<sup>313</sup> The Court indicated that the State must provide enough psychological treatment necessary to attend to each victim's condition.<sup>314</sup> Furthermore, the State must grant the victim's relatives immediate access to health benefits regardless of any legislation deadline or obstacle.<sup>315</sup>

### 4. Publish the Judgment

The Court ordered the State to publish this Judgment within six months in an official journal, a widely circulated national newspaper, and online.<sup>316</sup> Furthermore, the online publication must be made available for a period of one year.<sup>317</sup> The Court noted that the State must immediately notify the Court once each publication is made available regardless of any time period restriction.<sup>318</sup>

### 5. Publicly Acknowledge Responsibility

The Court ordered the State to publicly acknowledge responsibility before the national media within one year of this Judgment.<sup>319</sup> The announcement must reference the specific facts of the case, the victims, and the human rights violations declared in this Judgment.<sup>320</sup>

The Court held that because Ms. Teresa Díaz Aparicio's family members and beneficiaries were deceased and without access to

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311. *Id.* ¶ 246.

312. *Id.*

313. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 252.

314. *Id.*

315. *Id.*

316. *Id.* ¶ 254.

317. *Id.*

318. *Id.*

319. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 255.

320. *Id.* ¶ 255.

compensation, the State must place a tribute plaque recognizing Ms. Teresa Díaz Aparicio's forced disappearance by State agents.<sup>321</sup> The Court ordered the plaque be placed at the National University of San Marcos within one year from the date of the Judgement.<sup>322</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

With respect to the pecuniary damages the Court awarded the following amounts: (1) \$15,000 to Mr. Terrones Silva's wife, Ms. Frida Landázuri;<sup>323</sup> (2) \$15,000 to Ms. Tenicela Tello's mother, Ms. Amadea Tello Barrier;<sup>324</sup> (3) \$15,000 to Mr. Rojas Medina's mother Ms. Medina Negrón, and \$15,000 to his sister, Ms. Collantes Medina;<sup>325</sup> and (4) \$15,000 to Mr. Antezana Cueto's wife, Ms. Carcausto Paco.<sup>326</sup> The Court held that Ms. Teresa Díaz Aparicio had no living relatives or beneficiaries to receive pecuniary damages.<sup>327</sup>

#### 2. Non-Pecuniary Damages

With respect to the non-pecuniary damages the Court awarded the following amounts: (1) \$150,000 to Mr. Terrones Silva's wife, Ms. Frida Landázuri;<sup>328</sup> (2) \$150,000 to Ms. Tenicela Tello's mother, Ms. Amadea Tello Barrier, \$25,000 to her sister Ms. Norma Tenicela Tello, and \$10,000 to her brother Mr. Washington Tenicela Tello;<sup>329</sup> (3) \$150,000 to Mr. Rojas Medina's mother, Ms. Medina Negrón, and \$125,000 to his sister, Ms. Collantes Medina;<sup>330</sup> and (4) \$150,000 to Mr. Antezana Cueto's wife, Ms. Carcausto Paco, \$25,000 his brother Mr. Ermilio

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321. *Id.* ¶ 256.

322. *Id.*

323. *Id.* ¶ 270.

324. *Id.* ¶ 272.

325. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 274.

326. *Id.* ¶ 276.

327. *Id.* ¶ 278.

328. *Id.* ¶ 271.

329. *Id.* ¶ 273.

330. *Id.* ¶ 275.

Antezana Cueto, and \$10,000 to his cousin Ms. Antezana Torre.<sup>331</sup> The Court held that Ms. Teresa Díaz Aparicio had no living relatives or beneficiaries to receive non-pecuniary damages.<sup>332</sup>

### 3. Costs and Expenses

The Court awarded \$40,000 APRODEH, \$25,000 COMISEDH, and \$25,000 IDL for the costs and expenses related to the litigation of the cases domestically and internationally.<sup>333</sup>

Furthermore, the Court awarded \$5,095.99 as reimbursement for costs and expenses to the Court's Legal Assistance Fund for Victims.<sup>334</sup>

### 4. Total Compensation (including Costs and Expenses Ordered):

\$965,095.99

### *C. Deadlines*

The State must pay compensation for pecuniary damages, non-pecuniary damages, and cost and expenses within one year of this Judgment.<sup>335</sup> 290

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

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331. Terrones Silva et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 277.

332. *Id.* ¶ 278.

333. *Id.* ¶ 284.

334. *Id.* ¶ 288.

335. *Id.* ¶ 290.

[Terrones Silva et al. v. Peru, Preliminary Objections, Judgement, Inter-Am Ct. H.R. \(ser. C\) No. 360 \(Sept. 26, 2018\).](#)

[Terrones Silva et al. v. Peru, Preliminary Objections, Concurring Separate Opinion of Judge Vio Grossi, Inter-Am Ct. H.R. \(ser. C\) No. 360 \(Sept. 26, 2018\).](#)

## 2. Decisions on Merits, Reparations and Costs

[Terrones Silva et al. v. Peru, Merits, Reparations, and Costs, Judgement, Inter-Am Ct. H.R. \(ser. C\) No. 360 \(Sept. 26, 2018\).](#)

[Terrones Silva et al. v. Peru, Merits, Reparations, and Costs, Judgement, Concurring Separate Opinion of Judge Vio Grossi, Inter-Am Ct. H.R. \(ser. C\) No. 360 \(Sept. 26, 2018\).](#)

## 3. Provisional Measures

[Terrones Silva et al. v. Peru, Resolution of the President, Call for Hearing, Inter-Am Ct. H.R. \(ser. C\) No. 360, ¶ 1 \(Feb. 20, 2018\).](#)

[Terrones Silva et al. v. Peru, Resolution of the President, Inter-Am Ct. H.R. \(ser. C\) No. 360, ¶ 1 \(July 24, 2017\).](#)

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[Santiago Antezana Cueto et al., Petition to the Commission, Inter-Am. Comm'n H.R., Case No. 3/12, ¶ 1 \(January 27, 2012\).](#)

[Cory Clodolia Tenicela Tello et al., Petition to the Commission, Inter-Am. Comm'n H.R., Case No. 108/11, ¶ 1 \(July 22, 2011\).](#)

[Teresa Díaz Aparicio et al., Petition to the Commission, Inter-Am. Comm'n H.R., Case No. 163/11, ¶ 1 \(November 2, 2011\).](#)

2. Report on Admissibility

[Terrones Silva et al. v. Peru, Admissibility Report, Report No. 5/16, Inter-Am. Comm'n H.R., Case No. 11.053, ¶ 1 \(April. 13, 2016\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Terrones Silva et al. v. Peru, Report Merits, Report No. 5/16, Inter-Am. Comm'n H.R., Case No. 11.053, ¶ 1 \(April. 13, 2016\).](#)

5. Application to the Court

[None]

6. BIBLIOGRAPHY

[None]