



Organization of
American States



Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Iván Eladio Torres
(Case 12.533)
against Argentina

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

**CASE 12.533
IVÁN ELADIO TORRES ET AL.**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") submits to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") the application being lodged in Case No. 12,533, *Iván Eladio Torres et al.*, against the Republic of Argentina (hereinafter the "State", the "Argentine State" or "Argentina") for its responsibility in the arbitrary detention, torture and forced disappearance of Iván Eladio Torres (hereinafter "the victim"), in the city of Comodoro Rivadavia, Province of Chubut, commencing on October 3, 2003, the subsequent lack of due diligence in the investigation into the facts and the denial of justice to the detriment of the victim's next of kin.

2. The Inter-American Commission respectfully requests the Court to adjudge and declare the international responsibility of the State of Argentina, which has failed to comply with its international obligations by its violation of the following articles:

- 3, 7, 5, 4, 8(1) and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, all to the detriment of Iván Eladio Torres.
- I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Iván Eladio Torres.
- 5, 8 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof and to the detriment of the victim's next of kin, specifically his mother, brother, sister and niece.

3. This case has been processed in accordance with the terms of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and is submitted to the Inter-American Court pursuant to the transitory provision contained in Article 79(2) and other relevant provisions of the Court's Rules of Procedure. Attached as an appendix to this application is a copy of Report No. 114/09¹ which the Commission adopted on October 28, 2009.

4. The referral of this case to the Court is predicated on the need for a diligent investigation to ascertain the truth and secure justice and redress for Iván Eladio Torres and his next of kin for the harm caused by the violations committed. The forced disappearance of Iván Eladio Torres is an ongoing violation of a number of his fundamental and non-derogable rights and continues up to the present. The present case is also emblematic of the abuses that provincial police commit against vulnerable youth and of the lack of access to justice at the provincial level. Furthermore, the fact that the truth has not been established and that the perpetrators of the facts of this case have not been prosecuted, serves to prolong the suffering caused by the violation of

¹ IACHR, Report on the Merits No. 114/09, Case 12,533, Iván Eladio Torres, October 28, 2009. Appendix 1.

fundamental rights to the detriment of Iván Eladio Torres and his next of kin, even though the State has an obligation to provide a judicial resolution of the case and adequate reparations.

II. PURPOSE OF THE APPLICATION

5. The purpose of the present application is to petition the Court to declare that:

- The State of Argentina is responsible for violation of the rights to personal liberty, humane treatment, life, juridical personality, a hearing with due guarantees, and judicial protection, recognized in articles 7, 5, 4, 3, 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Iván Eladio Torres.
- The State is responsible for violation of articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Iván Eladio Torres.
- Argentina is responsible for violation of the right to humane treatment, the right to a fair trial and the right to judicial protection, recognized in articles 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Iván Eladio Torres, specifically his mother María Leontina Millacura Llaipén and his siblings Valeria and Marcos Torres.
- In the case of articles 3, 4, 5, 7 8(1), 25 and 1(1) of the American Convention, the Argentine State failed to comply with its obligation under Article 2 thereof, which is to adapt its domestic laws to conform to the Convention.

6. In consideration of the above, the Inter-American Commission is asking the Court to order that the State:

- Stage a public event in which it acknowledges its responsibility for the events in this case and for the harm done to the victim and his next of kin. It should also name a plaza or street in Comodoro Rivadavia after Iván Eladio Torres, to keep the memory of the past alive.
- Conduct a thorough, impartial and effective investigation to determine the fate or whereabouts of Iván Eladio Torres. If it is established that the victim is no longer alive, take the measures necessary to hand over his remains to his next of kin.
- Conduct a thorough, impartial, effective and prompt investigation of the facts to identify and punish the material and intellectual responsibility of all persons who participated in the events associated with the arbitrary detention, torture and forced disappearance of Iván Eladio Torres.
- Conduct a thorough, impartial, effective and prompt investigation of the persons attached to the various organs of the State that were involved in the investigations and judicial proceedings conducted in connection with the events of the instant case, to assign (administrative, disciplinary, criminal or other) blame for the deficiencies in the investigation and prosecution of the facts that has led to the situation of impunity.

- Adequately compensate the next of kin of Iván Eladio Torres, which shall include pecuniary and non-pecuniary damages for the violations of their human rights.

III. REPRESENTATION

7. In accordance with the provisions of Article 24 of the Court's Rules of Procedure, the Commission has appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Karla I. Quintana Osuna, María Claudia Pulido and Paulina Corominas, specialists with the IACHR's Executive Secretariat, have been appointed to serve as legal advisers.

IV. JURISDICTION OF THE COURT

8. Under Article 62.3 of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. The Court has jurisdiction to hear this case. The Argentinean State ratified the American Convention on August 14, 1984, and it accepted the Court's contentious jurisdiction on September 5, 1984.

10. In addition, the Court has jurisdiction to hear the instant case since Argentina deposited its instrument of ratification of the Convention on Forced Disappearance of Persons on February 28, 1996. According to Articles III and VII of that convention, 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 the corresponding criminal prosecution shall not be subject to statutes of limitations. Similarly, the Court has ruled on the continuous nature of the phenomenon of forced disappearance by establishing that:

Since its first judgment in the case of Velásquez Rodríguez [...] the Court has reiterated that the forced disappearance of persons is a crime of a continuous or permanent nature.² [...] Due to its permanent nature, while the fate or whereabouts of the victim or their remains is not established, the forced disappearance continues in execution.³

II. PROCESSING WITH THE COMMISSION

11. On November 14, 2003, the Inter-American Commission received a petition filed by Mrs. María Leontina Millacura Llaipén and the *Asociación Grupo Pro-Derechos de los Niños*. Additional information was provided on April 19, 2004. The IACHR proceeded to process the petition, which it classified as No. 960/03. It forwarded the pertinent parts of the complaint to the State on April 22, 2004, giving it two months in which to submit observations.

12. The State sent a communication on May 26, 2004, in which it requested a one-month extension. The Commission acceded to that request on June 8, 2004. On November 22, 2004, the Commission sent a note to the State, again asking it to supply information as soon as possible.

² I/A Court H. R., *Case of Tiu Tojin*, Merits, Reparations, and Costs, Judgment of November 26, 2008, Series C No. 190, para. 52.

³ *Ibid*, para. 84.

13. On January 10, 2005, Mrs. Leontina Millacura Llaipén and her attorneys Silvia de los Santos and Verónica Heredia, filed a request seeking precautionary measures for David Alberto Hayes, family members and witnesses to the disappearance of Iván Eladio Torres (namely, María Leontina Millacura Llaipén, Gerardo Atilio Colín, Luis Patricio Oliva, Tamara Bolívar, Walter Mansilla, Silvia de los Santos, Verónica Heredia and other relatives of Iván Eladio Torres). That request was classified as No. MC 9-05. On January 18, 2005, the IACHR granted the precautionary measures and gave the State seven days in which to report the measures adopted.

14. On January 19, 2005, the petitioners requested that the precautionary measures be expanded to include Juan Pablo Caba and Miguel Ángel Sánchez. They requested further amplification on January 24, 2005, this time to include the members of the Hayes family. The Commission agreed to both requests and forwarded the information to the State on January 21 and 25, 2005, respectively. The latter was given five days in which to report on the measures adopted.

15. On January 28, 2005, the State submitted information on the precautionary measures ordered by the Commission. That information was relayed to the petitioners on February 4, 2005, who were given seven days in which to submit their observations.

16. The petitioners submitted their observations on February 11, 2005, and asked that the Commission seek provisional measures for the beneficiaries. That communication was forwarded to the State on February 15, 2005, which was given five days in which to report on the matter.

17. On March 8, 2005, the State submitted information to the Commission regarding the request for provisional measures. It enclosed information related to the investigation, but had no comment regarding the petition's admissibility. That information was forwarded to the petitioners on March 31, 2005, together with a list of questions. They were given ten days in which to reply and submit observations.

18. The petitioners responded by notes dated April 12 and May 3, 2005, in which they submitted their observations. Their replies were forwarded to the State on June 8, 2005, which was given 15 days in which to submit observations. On July 5, 2005, the State submitted its observations on the petitioners' replies. The parties met at the negotiating table several times during the processing of the petition, to examine questions having to do with the precautionary measures and the investigation into the facts denounced.

19. The Commission adopted its admissibility report No. 69/05 on October 13, 2005⁴ in which it found that the petition was admissible with respect to articles 2, 4, 5, 7, 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, and articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

20. The report was sent to the petitioners and to the State on December 6, 2005. Pursuant to Article 48(1)(f) of the American Convention, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter and asked the parties to reply to the offer and to present their observations on the merits within two months.

21. By communications dated December 14 and 27, 2005, the petitioners submitted their observations on Report No. 69/05. They also expressed an interest in undertaking a friendly settlement process and said that on January 26, 2006, they presented the State with a friendly

⁴ IACHR, Admissibility Report No. 69/05, Case 12,533, Iván Eladio Torres, October 13, 2005. Appendix 2.

settlement proposal. Because Iván Eladio Torres had been disappeared for 28 months, the proposal consisted of a number of measures that were to be taken by February 3, 2006. However, by a communication dated February 6, 2006, they reported that because the State had purportedly taken no action at all, they had concluded that it declined the friendly settlement proceeding. They therefore asked the Commission to continue the process in the merits phase. That information was relayed to the State in a communication dated February 10, 2006.

22. On March 8, 2006, during the Commission's 126th session, a working meeting was held in which representatives of Mrs. María Leontina Millacura Llaipén participated, along with representatives of the provincial government and representatives of the federal government. On the occasion of that meeting, the State conveyed note OEA 73, dated March 10, 2006, in which it presented a report on the developments in the case in which Iván Eladio Torres' disappearance was being investigated. The title read "MILLACURA LLAI PEN, María Leontina/Disappearance Complaint." Also attached was a certified copy of the complaint that the Governor of the Province of Chubut and the State's Attorney presented to the Superior Court of the Province of Chubut in connection with the trial proceedings instituted against the Examining Magistrate of Comodoro Rivadavia "for negligence in the performance of his functions ... in examining cases one of which is the case of Millacura Llaipén, María Leontina/Disappearance Complaint (No. 1138/03) in which the disappearance of Iván Eladio Torres is being investigated."

23. By a communication dated March 20, 2006, the Commission forwarded to the State the observations on the merits that the petitioners had submitted on December 14, 2005, February 16 and March 6, 2006, and gave it one month in which to present its observations.

24. On May 9, 2006, the petitioners requested an extension to submit its final allegations. In Note OEA 141, received on May 15, 2006, the State requested a one-month extension for submitting its observations on the information supplied by the petitioners.

25. By a communication dated June 29, 2006, the Commission sent the petitioners the information the State had supplied on March 10, 2006. It asked that the petitioners submit the pertinent observations within one month.

26. On July 11, 2006, the *Centro de Estudios Legales y Sociales* [Center of Legal and Social Studies] (CELS) sent the Commission a report that it had prepared on the disappearance of Iván Eladio Torres. CELS had prepared the report as the result of a visit that CELS staff made to the city of Comodoro Rivadavia on October 30 and November 4, 2005. It had conducted various interviews and did an analysis of the court record.

27. On July 26, 2006, the Commission sent the State a note reiterating the request it had made in an earlier communication dated March 20, 2006, which was that it submit its observations on the merits. In keeping with Article 38(1) of its Rules of Procedure, the Commission gave the State two months in which to present those observations.

28. In an August 31, 2006 communication, the State reported that efforts to speak with the petitioners were being made, to discuss the possibility of arriving at a friendly settlement of the case, as had been established in the document signed on August 9, 2006 on the occasion of the working meeting held to agree upon the adoption of the provisional measures that the Inter-American Court of Human Rights had ordered.

29. By note 286 of September 14, 2006, the State requested a one-month extension on the time period for submitting its observations on the merits. On October 3, 2006, the Commission agreed to a 12-day extension.

30. By note OEA 331, dated October 24, 2006, the State again expressed its interest in arriving at a friendly settlement of the case with the petitioners and asked for the Commission's cooperation in reaching a settlement. That information was relayed to the petitioners in a communication of November 20, 2006.

31. In a communication dated December 1, 2006, the petitioners were advised that the Commission would be making a working visit to Argentina from December 3 through 8, 2006. The parties were invited to a working meeting, slated to be held on December 7, 2006.

32. On December 6, 2006, a note from the petitioners was received to the effect that they would not be attending the working meeting because in their view the State had not acted promptly to make the travel arrangements for the mother of Iván Eladio Torres and her representatives.

33. On December 21, 2006, a brief was received from the petitioners answering the information sent on November 20, 2006. That information was sent to the State by a communication dated January 30, 2007. That same day, both the petitioners and the State were sent copies of the report that CELS prepared on "the disappearance of Iván Eladio Torres."

34. On August 14, 2007, the Commission sent the petitioners and the State a request seeking updated information. In that same communication, the State was informed that the Commission had copies of various documents that were part of the court files related to the disappearance of Iván Eladio Torres. At the State's request, on September 6, 2007 the Commission sent it copies of that documentation and gave it one month to submit any observations it might have. By note OEA 255, dated September 13, 2007, the State requested an extension, which was granted on October 3, 2007.

35. By an e-mail of November 14, 2007, the petitioners sent the Commission a copy of the October 15, 2007 ruling delivered by Federal Judge Eva L. Parcio de Seleme in case No. 7020 "Millacura Llaipén, María Leontina/the Forced Disappearance of a Person." That information was forwarded to the State by a communication dated November 26, 2007.

36. On January 11, 2008, the Commission received a copy of the brief that the petitioners filed with Federal Judge Parcio stating that they would not be exercising their right to appeal the ruling.

37. By note OEA 29 of January 17, 2008, the State sent an answer to the request that the Commission had sent seeking up-to-date information. The State's answer was sent to the petitioners on March 26, 2008.

38. By a communication dated January 23, 2009, the Commission sent the petitioners and the State a series of specific questions to help it complete its analysis of the case *sub examine*.

39. By a communication dated February 23, 2009 the petitioners answered the Commission's questions and supplied additional information as well. The Commission forwarded the petitioners' response to the State by a communication dated March 6, 2009. The State, for its part, responded in note OEA 280 of July 10, 2009.

40. On October 28, 2009, during the course of its 137th regular session, the Commission approved Merits Report 114/09, prepared pursuant to Article 50 of the Convention. There it concluded that:

the Argentine State is responsible for violation of the right to recognition of juridical personality, the right to personal liberty, the right to humane treatment, the right to life, the right to judicial guarantees and the right to judicial protection, recognized in articles 3, 7, 5, 4, 8(1) and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, all to the detriment of Iván Eladio Torres. The Commission also concludes that the State is responsible for violation of the rights to humane treatment, to judicial guarantees and to judicial protection, recognized in articles 5, 8 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof and to the detriment of the victim's next of kin, specifically his mother, brother, sister and niece.

The Commission further concludes that the State is responsible for violation of articles I, III, and XI of the Inter-American Convention on Forced Disappearance of Persons, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Iván Eladio Torres.

The Commission also finds that based on the parties' submissions and the material offered in the case file, it does not have sufficient elements to prove the violations the petitioners alleged of articles 10, 11, 17, 19 and 24 of the American Convention.

41. In that Report, the Commission made the following recommendations to the Argentine State:

1. Stage a public event in which it acknowledges its responsibility for the events in this case and for the harm done to the victim and his next of kin. It should also name a plaza or street in Comodoro Rivadavia after Iván Eladio Torres, to keep the memory of the past alive.
2. Conduct a thorough, impartial and effective investigation to determine the fate or whereabouts of Iván Eladio Torres. If it is established that the victim is no longer alive, take the measures necessary to hand over his remains to his next of kin.
3. Conduct a thorough, impartial, effective and prompt investigation of the facts to identify and punish the material and intellectual responsibility of all persons who participated in the events associated with the arbitrary detention, torture and forced disappearance of Iván Eladio Torres.
4. Conduct a thorough, impartial, effective and prompt investigation of the persons attached to the various organs of the State that were involved in the investigations and judicial proceedings conducted in connection with the events of the instant case, to assign (administrative, disciplinary, criminal or other) blame for the deficiencies in the investigation and prosecution of the facts that has led to the situation of impunity.
5. Adequately compensate the next of kin of Iván Eladio Torres, which shall include pecuniary and non-pecuniary damages for the violations of their human rights.

42. The State was notified of the report on November 18, 2009, and was given two months in which to report on the measures undertaken with a view to implementing the recommendations contained therein, pursuant to the Article 43(2) of the Commission's Rules of Procedure in force at the time.

43. On that same date, and in accordance with then Article 43(3) of its Rules of Procedure, the Commission informed the petitioners of the adoption of the merits report and its

transmittal to the State; it also gave the petitioners one month in which to present their position as to whether the case should be submitted to the Inter-American Court.

44. By a communication dated December 18, 2009, and received that same day, the petitioners stated their position in favor of the case being submitted to the Inter-American Court of Human Rights.

45. By note of January 18, 2010, the State requested an extension of the time period that the Commission had stipulated in Report 114/09 as the deadline for the State to comply with the recommendations contained therein. In its communication, the State expressly asserted that for the duration of the requested extension, it would waive preliminary objections alleging the Commission's failure to comply with the time period stipulated in Article 51 of the American Convention. On February 2, 2010, the Commission gave the State a two-month extension.

46. By note of March 18, 2010, the State submitted a report on the status of its compliance with the recommendations, and requested a second extension on the grounds that it would be examining other measures to be taken to fully comply with the recommendations the Commission made in Report 114/09. That information was forwarded to the petitioners in a communication dated March 25, 2010, in which the Commission requested that they submit the observations they deemed pertinent within five days. The petitioners forwarded their observations by a communication dated March 31, 2010.

47. After considering the information supplied by the parties with respect to implementation of the recommendations contained in the report on the merits, and given the lack of any substantive progress made toward their effective fulfillment, the Commission decided to refer the present case to the Inter-American Court.

A. Precautionary Measures

48. On January 10, 2005, the petitioners filed a request with the Commission seeking precautionary measures for David Hayes, who was serving a jail sentence in the First Sectional Police Precinct of Comodoro Rivadavia, Chubut, on the day that Iván Eladio Torres disappeared. The petitioners argued that David Hayes had allegedly testified as a witness in the investigation being conducted into Iván Eladio Torres' disappearance and that his life was said to be in danger because personnel at the First Sectional Police Precinct had made death threats against him because of the testimony he gave.

49. The petitioners also alleged that Gerardo Colin and Patricio Oliva – both 17 – were said to have last seen Iván in a downtown square. They told the prosecutors handling the case of Iván's disappearance that the police were constantly harassing them, to the point that they were now afraid for their personal safety and that of their family. The petitioners pointed out that although a complaint was filed, no measures were taken to protect either of the two young men.

50. The petitioners also mentioned the case of Ms. Tamara Bolívar who, according to their story, had allegedly been raped by a police officer who asked her if she was Iván's sister. After raping her, he reportedly told her "I'll be waiting for you at the First Precinct when you come in to file your complaint." The petitioners also point out that Walter Mansilla, another witness to what happened to Iván Eladio Torres, had received a number of threats from police since making his statement.

51. The petitioners also pointed out that members of the family of Iván Eladio Torres – his mother, sister, brother and their respective families- were allegedly being harassed and threatened; some had allegedly even been detained by police officers.

52. In a telephone call made on January 18, 2005, the petitioners reported that David Hayes had died on January 17, 2005, having been stabbed in a fight inside the Comodoro Rivadavia holding facility while in the custody of agents of the State. The attorneys representing Mrs. María Leontina Millacura Llaipén requested precautionary measures on her behalf, as they feared for her life and safety. They also reported that another witness to the disappearance of Iván Eladio Torres, Miguel Ángel Sánchez, had allegedly told Iván's mother that he feared for his safety.

53. On January 18, 2005, the Commission asked the Argentine State to adopt precautionary measures to protect the life and personal safety of María Leontina Millacura Llaipén, the mother of Iván Eladio Torres, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Walter Mansilla, Silvia de los Santos, Verónica Heredia and the next of kin of Iván Eladio Torres. The Commission also urged the State to arrange the measures to be adopted with the petitioners and the beneficiaries, and to take measures to investigate the facts.

54. On January 21, 2005, the Commission asked the State to expand the precautionary measures to include Juan Pablo Caba, son-in-law of María Millacura Llaipén, who had allegedly been a witness to what happened to David Hayes and had been threatened as a result. It also requested precautionary measures for Miguel Sánchez, who had received threats because he was a witness in the investigation conducted into the disappearance of Iván Eladio Torres.

55. On January 25, 2005, the Commission asked the State to expand the precautionary measures to include all members of David Hayes' family.

56. On February 11, 2005, the petitioners asked the Commission to seek provisional measures from the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") to protect the beneficiaries of the precautionary measures requested by the Commission. That communication was sent to the State on February 15, 2005, which was given five days to report on the situation of the beneficiaries of the precautionary measures. By a note received on March 2, 2005, the State supplied the respective information, which was then forwarded to the petitioners on March 31, 2005. They were asked to supply additional information.

57. On May 3, 2005, the petitioners sent their observations on the reports submitted by the State and conveyed their proposals as to the measures they believed the State should take to comply with the Commission's request.

58. The Commission's analysis of the information supplied by the petitioners and by the State found that the Federal Government appeared to have implemented the precautionary measures to some extent. On July 1, 2005, therefore, the Commission decided to deny the request that it seek provisional measures and opted instead to keep the precautionary measures in place.

B. Provisional Measures

59. On March 13, 2006, while the precautionary measures were still in force, the petitioners sent the Commission a communication wherein they once again prevailed upon the Commission to file a request with the Inter-American Court seeking provisional measures. On March 21, 2006, the Commission asked the petitioners and the State to provide information on the precautionary measures. The petitioners supplied information in a communication dated April 25, 2006, whereas the State replied by note OEA/53 of May 8, 2006.

60. On June 20, 2006, the Commission filed a request with the Court seeking provisional measures, so that the Argentine Republic would take the actions necessary to protect the life and personal safety of the beneficiaries of the precautionary measures, as the risk of irreparable harm had increased in the months leading up to the request. The Commission stated that the precautionary measures it had requested had not had the effect of protecting the beneficiaries, as the threats against them had continued since the time the measures were granted; in fact in April 2006, Valeria Torres, sister of the disappeared Iván Eladio Torres, had allegedly been beaten up by staff of the Third Sectional Precinct of Comodoro Rivadavia.

61. On June 21, 2006, the President of the Inter-American Court asked the Argentine State to adopt "immediately, all measures necessary to protect the rights to life and to the security of one's person of María Leontina Millacura Llaipén, Marcos and Valeria Torres, Juan Pablo Caba, Gerardo Colín, Patricio Oliva, Tamara Bolívar, Walter Mansilla, Miguel Ángel Sánchez, Silvia de los Santos, Verónica Heredia, and Viviana and Sonia Hayes, taking into account the seriousness of the situation and the particularly dangerous circumstances." It also summoned the parties to a public hearing to be held on July 6, 2006.

62. On June 26, 2006, the petitioners submitted their observations regarding the measures of protection. They requested that Iván Eladio Torres' name be added as a beneficiary and requested that an order be issued to have a report prepared by an expert in investigation and criminology in order to find him. They also requested that the life and physical integrity of the persons covered by the precautionary measures be protected, especially that of Miguel Ángel Sánchez, whom they asked be transferred to a detention facility in Río Grande, in the Province of Tierra del Fuego. They also asked that Juan Pablo Caba be taken to a safe place, that the household protection for María Leontina Millacura Llaipén and her family be continued, that Mrs. Millacura Llaipén be given financial assistance and that funds be provided so that she could continue her case with the inter-American system. They asked that the household protection for the Hayes family be continued; that funds be provided to install security systems in the homes of the beneficiaries' attorneys: Silvia de los Santos Verónica Heredia; that a witness protection program be developed for Gerardo Colín, Patricio Oliva, Tamara Bolívar and Walter Mansilla, and that the Argentine State be required to ensure that María Leontina Millacura Llaipén and the legal representatives of the beneficiaries of the measures had access to the international jurisdiction, especially so that they could attend the hearing convened by the Court.

63. The Inter-American Court held the public hearing on July 6, 2006. That same day it issued an order in which it stated that "despite the measures adopted by the State to protect the rights to life and personal integrity of the beneficiaries, a situation persists of extreme gravity and urgency and possible irreparable damage to the rights to life and personal integrity of the beneficiaries of the measures." The Court therefore decided to ratify, in all its parts, the Order of the President of the Inter-American Court of Human Rights of June 21, 2006.

64. In a brief dated July 28, 2006, the beneficiaries told the Court that the State had taken no steps to comply with what the Court decided in its order of July 6, 2006, or the commitment it had undertaken that same day.

65. By a communication dated August 3, 2006, the Court sent the Commission information received from the State and a copy of the July 27, 2006 brief in which the Executive Director of the Center for Legal and Social Studies (CELS), acting as *amicus curiae*, had submitted the document titled "Report on the disappearance of Iván Eladio Torres."

66. On September 19, 2006, a communication from the petitioner was received at the Commission in which she reported that on August 9, 2006, a meeting had been held with representatives of the State, where several agreements were said to have been reached with a view to complying with the measures requested by the Court.

67. On September 28, 2006, the Court sent to the Commission and to the beneficiaries' representatives a copy of the report that the State had submitted in connection with the steps taken to comply with the provisional measures. The State had reported that Miguel Ángel Sánchez had allegedly been moved to Detention Unit No. 1 in Rio Grande, in the Province of Tierra del Fuego, on August 17, 2006. On October 12, 2006, the representatives of the beneficiaries sent the Court their observations on the State's report. The Commission sent its observations on November 21, 2006. In observations dated June 14, 2007, the representatives of the beneficiaries advised the Court of the death of beneficiary Walter Mansilla who, according to the unofficial account told to Mrs. Millacura Llaipén, had allegedly died in a fight.

68. By a communication of October 20, 2008, the representatives sent additional information in which they alluded to a supposed death threat that an unidentified man had purportedly made against Mrs. María Leontina Millacura Llaipén outside Police Precinct No. 1 of Comodoro Rivadavia. By a note dated October 23, 2008, the Court requested information from the State.

69. On October 29, 2008, the representatives of the beneficiaries submitted to the Inter-American Court their observations on the State's report of September 17, 2008, and sent a copy of the October 15, 2008 ruling of the Federal Appellate Court of Comodoro Rivadavia; a copy of an entry in the death records listing the death of Walter Mansilla, and an *amicus curia* brief that a nongovernmental organization called Patagonian Legal and Social Clinic [*Clínica Jurídica y Social Patagónica*] had filed with the United Nations Working Group on Forced or Involuntary Disappearance.

70. The State, the representatives of the beneficiaries and the Inter-American Commission have continued to submit their respective reports and observations concerning implementation of the provisional measures. It is worth noting that the State has requested that provisional measures be lifted. The Commission, for its part, has maintained that based on the information supplied by the parties the risk persists; hence, the grounds for keeping the provisional measures in force still obtain. For their part, the representatives recently reiterated their request that the provisional measures order for Iván Eladio Torres be expanded. The provisional measures remain in force.

VI. CONSIDERATIONS OF FACT

IV. ASSESSMENT OF EVIDENCE

71. In the Inter-American System for the Protection of Human Rights, when the Commission studies individual petitions containing allegations of human rights violations on the part of States and during the contentious proceedings conducted with the Inter-American Court, the criteria used to assess the evidence are less stringent than those required under domestic laws. Time and time again the Inter-American Court has held that a rigid determination of the *quantum* of evidence necessary as the basis for a ruling does not apply, inasmuch as international courts have the authority to appraise and assess evidence based on the rules of competent analysis.⁵

⁵ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004, Series C No. 110, paragraph 41, citing *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 48; *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paragraph 120; *Case of Bulacio*. Judgment of

72. In effect, in addition to direct evidence, be it testimonial, expert or documentary, when ascertaining and weighing the evidence in the case *sub examine* it is particularly important to assess the set of presumptions that follow from the facts and that, based on experience, are valid and logical presumptions when there is no direct evidence of the facts in the case,⁶ especially in cases of forced disappearance, where the purpose is to erase all material evidence of the crime. The Inter-American Court has held that “[c]ircumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”⁷

73. In the case law of the Inter-American Court, significant weight has been attached to newspaper clippings as a means of evidence, especially in cases of forced disappearance.⁸ The Court has held that even though newspaper clippings are not documentary evidence in the strict sense, “they may be taken into account when they reflect public or notorious facts, statements of officials of the State, or when they corroborate what has been set forth in other documents or testimony received during the proceeding.”⁹

V. MERITS

1. Concerning the forced disappearance of Iván Eladio Torres

74. Iván Eladio Torres was born in Castro, Chile, on November 24, 1976. Prior to his disappearance he lived with his mother, María Leontina Millacura Llaipén, his sister Valeria and her daughter, in a humble home in downtown Comodoro Rivadavia, Province of Chubut, Argentina. Iván was the breadwinner for his mother, sister and niece. He worked in the construction business, and did a variety of jobs, sometimes with this brother Marcos. He was in the habit of getting together with friends and other persons he knew on the downtown streets and in the squares.

75. Like his friends, Iván Eladio Torres was watched by the police of Comodoro Rivadavia,¹⁰ and was frequently detained and taken to the police precincts of the Province of Chubut, especially the First Sectional Precinct.¹¹ As the court records show, the police arrests were

September 18, 2003. Series C No. 100, paragraph 42; *Case of Juan Humberto Sánchez. Interpretation of the Judgment on Preliminary Objections, Merits and Reparations (Art. 67 of the American Convention on Human Rights)*. Judgment of November 26, 2003. Series C No. 102, paragraph 42.

⁶ I/A Court H.R. *Case of Cantoral Benavides*, Judgment of August 18, 2000, paragraph 47; *Case of “The Street Children” (Villagrán Morales et al.)*, Judgment of November 19, 1999, paragraph 69; *Case of Castillo Petruzzi et al.*, Judgment of May 30, 1999, paragraph 62; and *Case of El Caracazo*, Judgment on Reparations, August 29, 2002, paragraph 55.

⁷ I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988. Series C No. 4, paragraph 131, on the importance of clues or presumptive evidence.

⁸ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 56; *Case of Cantos v. Argentina*, Judgment of November 28, 2002. Series C No. 97, paragraph 39; *Case of Baena Ricardo et al.* Judgment of February 2, 2001. Series C No. 72, paragraph 78; *Case of the Mayagna (Sumo) Awá Tingni Community*. Judgment of August 31, 2001, Series C No. 66, paragraph 94.

⁹ I/A Court H.R. *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004, paragraph 51

¹⁰ The Center for Legal and Social Studies [*Centro de Estudios Legales y Sociales*] (CELS) and the nongovernmental organization Human Rights Watch (HRW) have issued reports on police brutality in Argentina. CELS has spoken out about the threats, arbitrary arrests, and the use of unlawful duress, which it describes as routine practices used by the Comodoro Rivadavia police. Center for Legal and Social Studies, Human Rights Watch, *“Inseguridad Policial. Violencia de las fuerzas de seguridad en la Argentina.”* Editorial Eudeba, 1998. Annex 1. See also “Report on the disappearance of Iván Torres”, dated June 29, 2006. Annex 2.

¹¹ Testimony of officers Sebastián Florentino Sifuentes and Sergio Omar Thiers, both given on November 11, 2003.

done on the basis of Law 815 “The Organic Police Law,”¹² and more specifically for background checks, behavior and ways of earning a living. Because they were young, poor, and tended to gather in the city squares, Iván Eladio Torres and his circle of friends were watched by the police and frequently mistreated by certain members of the police force.¹³ As far back as 1995, these police practices have been reported by various media outlets in the region.¹⁴

76. In September 2003, police from the First Sectional Precinct detained Iván Eladio Torres and took him to a remote place on the outskirts of the city, known as Km. 8. There they subjected him to a mock execution.¹⁵

77. In her criminal complaint Mrs. Millacura Llaipén stated that she suspected the police because “about a month and a half [earlier], the police put my son into a patrol car and threw him out at Km. 8. I don’t know where they picked him up, but they threw him out there and put him on

“Yes, I know him [Iván Torres]... because he was taken into custody several times under Law 815.” (Sifuentes)

“There are cases in which the police use Organic Law 815 for preventive purposes, to do background checks and determine whether the individual is earning his living legally; however, in practice the police can, under certain circumstances, use prevention to pick up people wandering around certain places ...” (Thiers)

See pages 123 and 126 of Volume I of the Court Record on the case of “Millacura Llaipén, María Leontina/Disappearance Complaint”. Annex 3.

¹² Article 10, paragraph b) of Law 815 specifies that police have the authority to “Detain any person whose background and means of earning a living they deem it necessary to check, provided the circumstances warrant such action or if the individual in question refuses to identify himself. The delay or detention of the person in question may last no longer than the time needed to identify him, check his address, record and means of earning a living, and shall not exceed 24 hours.” Annex 4.

¹³ The surveillance and mistreatment to which young people of little means are subjected was addressed in an internal report prepared in February 2004, by staff of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Argentine State. It concluded that in Comodoro Rivadavia, “young people from humble homes are constantly being mistreated by police and local magistrates.” This report was the product of an investigation that the staff of that Ministry conducted in connection with the case of “Millacura Llaipén, María Leontina/Disappearance Complaint.” Their investigation was conducted on February 24, 25, and 26, 2004. Annex 5.

¹⁴ By a communication dated December 14, 2005, the petitioners sent various copies of newspaper articles on the brutality the police used on young people in the province of Chubut. Annex 6. The following are among those articles: *Diario El Chubut*, Comodoro Rivadavia, *Graves acusaciones contra policías, jueces y médicos de la Legislatura*, [In the Legislature, serious accusations against police, judges and doctors], October 1, 1998. *El Patagónico*, *Cuatro madres denuncian brutalidad policíaca* [Four mothers denounce police brutality], March 2, 1999. *El Patagónico*, *Para los familiares de desaparecidos “es una falta de respeto a nuestro dolor. Encima dijo que era de un indio”* [For the families of the disappeared “it is disrespectful of our pain. On top of that, he said that he was just an Indian.” Chodil: “The judge ordered the skull incinerated”, July 21, 2002. *Policiales*, *Interpol estaría investigando nuevos datos sobre una joven desaparecida en Comodoro* [INTERPOL is said to be investigating new data on a young woman who disappeared in Comodoro], (date illegible). *Policiales*, *Asesinos de Mónica Acuña no se acuerdan dónde la enterraron* [The murderers of Mónica Acuña don’t remember where they buried her], (date illegible). *El Patagónico*, *Apremios ilegales: remueven a 30 oficiales* [Police brutality, 30 officers are removed], May 2, 2003. *El Patagónico*, *Integrantes del CELS, alarmados por las desapariciones de personas en Comodoro* [Members of CELS alarmed by the disappearances in Comodoro] (date illegible). *Crónica*, *Caso Gramajo: procesaron al oficial Leguizamón y al sargento Caro* [Gramajo Case: Officer Leguizamón and Sergeant Caro indicted], February 17, 2004. *El Patagónico*, *A Gramajo lo fusilaron cuando estaba arrodillado* [Gramajo was on his knees when they shot him], February 17, 2004. *Policiales*, *Desaparecidos en Comodoro, una deuda pendiente con la sociedad, una lista demasiado grande en los últimos 10 años con muchas incógnitas sobre el paradero de personas* [The Disappeared in Comodoro, a debt owed to society, a list that has grown too long in the last 10 years with too many unanswered questions as to the whereabouts of the disappeared], April 11, 2004. *Crónica*, *Angustiada madre denuncia violento accionar policial contra su hijo* [An anguished mother denounces police brutality against her son], July 11, 2004. *El Patagónico*, *En Chubut denuncian abuso policial y discriminación* [Complaints in Chubut of police brutality and discrimination], September 2, 2004. *El Patagónico*, *El mismo grito de hace un año “que aparezca Iván”* [The same outcry echoing from a year ago, ‘Where’s Iván?’], October 3, 2004. *Crónica*, *A siete años de otra misteriosa desaparición; la de Mónica Elizabeth Acuña* [Seven years after another mysterious disappearance, that of Mónica Elizabeth Acuña], July 20, 2005

¹⁵ Statements given as testimony by Walter Marcos Mancilla, Mauricio David Agüero, Tamara Elizabeth Bolívar, Cristian Eduardo Gamón, Gerardo Atilio Colín and David Alberto Hayes, contained in the Court’s Records in the case, Annex 3.

the ground saying "now we're going to kill you." They beat him up and took his shoes. Then they fire a shot to scare him. According to what my son told me, he crept along the ground among the bushes so that they wouldn't kill him."¹⁶

78. The Log for the Radio Dispatch Center for September 25 and 26, 2003¹⁷ shows that at 3:12 a.m. on September 26, and in response to a telephone call reporting two suspicious persons, police from the First Sectional Precinct were dispatched in patrol car 469. They took Iván Torres and Diego Álvarez into custody. In its communications the State observed that "that detention did in fact occur, but was never recorded in the [Precinct's] daily log."¹⁸

79. At around 6:00 p.m. on October 2, 2003, Iván Eladio Torres met friends at the Plaza España in the city of Comodoro Rivadavia, where they remained until around midnight. He then went to Plaza Bitto with two friends who briefly went inside an ice cream shop. From there they saw a patrol car closing in on Iván, with three police officers inside. A few minutes later, when they returned to the square, Iván was nowhere to be found and they never saw him again.¹⁹

80. Iván Eladio Torres was last seen in the early morning hours of October 3, 2003, by Luis Patricio Oliva and Gerardo Atilio Colín in Plaza Bitto," and by David Hayes at the First Sectional Precinct, where Hayes was being held at that time.²⁰

81. The First Sectional Precinct's daily log, a copy of which the petitioners sent to the Commission, shows that David Hayes was being held there on October 3, 2003, together with Luis Alberto Gajardo and Miguel Ángel Sánchez.²¹

82. On January 9, 2005, David Hayes, who at the time was serving a jail sentence in the First Sectional Precinct, handwrote a letter which he handed to Mrs. María Leontina Millacura Llaipén. A copy of that letter is in the case file and reads as follows:

I'm David Hayes and I'm a witness in the case of Iván Torres. However, my life is in danger, because a death threat was made against me. But I'm willing to testify in the North American court. From a window in a bathroom, I saw them hitting him. A number of police officers were beating him up, one of them was officer Montesino, Chief Teyeria –he's the one who threatened my life. I can identify the police officers who were there that night and I can show the place where he fell unconscious. They grabbed him and dragged him to a staircase that leads to the regional unit. Another police officer was wiping up the stairs to the regional unit. It was in the early morning hours that I saw them bring Iván in and they beat him. I didn't tell everything I saw, but I did ask if I could amplify my statement, and he told me I had every right, but then he was with Chief Tiyeria and they looked at me and laughed, so I kept quiet.. David Hayes 28.451142²².

¹⁶ Copy of the complaint filed by Mrs. María Leontina Millacura Llaipén at 1, Volume I, of the Court Records in the Case. Annex 3.

¹⁷ Copy of the daily log, which the State sent as an attachment to its communications. Annex 7.

¹⁸ Note from the State SG 334, dated November 7, 2005. Annex 8.

¹⁹ Copy of the statements given as testimony by Marcos Mancilla, Cristian Eduardo Gamín, Gerardo Atilio Colin and Luis Patricio Oliva, which are in the Court's records of the case, Annex 3.

²⁰ Copy of the statements of Luis Patricio Oliva and Gerardo Atilio Colín, which are in the court records of the case, Annex 3, and a letter from David Hayes dated January 10, 2005, Annex 9.

²¹ Copy of the First Sectional Precinct's daily log for October 3, 2003, Annex 10.

²² Letter from David Hayes dated January 10, 2005, Annex 9.

83. On January 10, 2005, the petitioners filed a request with the Commission seeking precautionary measures for David Alberto Hayes. They argued that he had witnessed what had allegedly happened to Iván Torres on October 3, 2003, at the First Sectional Precinct and that his life was allegedly in danger because a threat had supposedly been made on his life by the Chief of the First Sectional Precinct (*supra*).²³

84. David Alberto Hayes died on January 17, 2005. He was stabbed to death on the premises of the First Sectional Precinct of Comodoro Rivadavia, while in the custody of the State.

85. In his initial statements, Luis Alberto Gajardo said he didn't hear anything on the night of October 3, 2003. He also said that he had not seen Iván Torres and did not know him. However, on October 14, 2005, he stated that he felt persecuted by the police and was afraid.²⁴ On November 11, 2005, Miguel Ángel Sánchez refused to make any statement because he was being threatened.²⁵ Furthermore, members of the families of Iván Eladio Torres and witnesses have received threats or have been harassed.²⁶

86. After David Hayes saw him on October 3, 2003, Iván Eladio Torres was never seen again.

87. Based on these considerations, the Commission finds that it has sufficient information to conclude that Iván Eladio Torres was the victim of a forced disappearance perpetrated by agents of the State, without prejudice to the analysis of international responsibility that the Commission will do, based on the relevant provisions of the American Convention.

2. Concerning the judicial inquiries.

88. When she had no news from her son, Mrs. María Leontina Millacura Llaipén contacted the First Sectional Precinct of Comodoro Rivadavia on October 4, 2003 to inquire whether her son was in custody. She was told that he was not, whereupon "I went to the Precinct to report my son's disappearance. They took my son's particulars and told me that they were going to look for him."²⁷ On October 6 and 8, 2003, she went to the Precinct again to ask about Iván's whereabouts, but got the same negative reply and her complaint was not accepted.

89. On October 14, 2003, Mrs. María Leontina Millacura Llaipén returned to the First Sectional Precinct of Comodoro Rivadavia, complaining that "for some fourteen days I have had no word from my son Iván Eladio Torres..." At "around 3:00 p.m. on October 1 (sic), 2003, he left the house alone, saying that he was going to the Plaza España. He told me 'Mom, I'll be home early'." Walter Mansilla told her he had been with Iván and other young men that day in the Plaza España, and that was the last time he saw him.

90. So, on October 14, 2003, the case "Millacura Llaipén, María Leontina/Disappearance Complaint" was instituted. The presiding judge was Examining Judge No. 2, Oscar Ricardo Publio Herrera. The following agents were questioned in the case: Fabián Alcides Tillería, Juan Sandro

²³ Request seeking precautionary measures, dated January 10, 2005. Annex 11.

²⁴ Statements of Luis Alberto Gajardo, in the Court's record of the case, Annex 3.

²⁵ Statement of Miguel Ángel Sánchez: "I'm not going to make a statement because last week I received a clear and concise message from Chief Sarmiento and Deputy Chief Bustos in my cell, to the effect that I 'talk too much' and that 'we know who talks too much, we know who can't shut his mouth'." Court's record of the case, Annex 3.

²⁶ See file of provisional measures.

²⁷ As observed in the petition that Mrs. Millacura Llaipén lodged with the IACHR on November 14, 2003. Annex 12.

Montecino, Marcelo Miguel Alberto Chemín, José Luis Bahamonde, Pablo Miguel Ruiz, Mario Alberto Gómez, Hernán Eliseo Leiva, Rosana Elisabet Soler, Nicolás Alberto Fajardo, Sergio Omar Thiers, Sebastián Florentino Sifuentes, Santiago Antonio Rodríguez, Héctor Enrique Concha and Roberto Damián Soto. The questioning concerned their alleged involvement in the facts reported in the complaint.

91. In addition to the complaint filed by Mrs. Millacura Llaipén, on October 27, 2003 Valeria Torres, Iván Eladio Torres' sister, filed a petition of *habeas corpus* with Examining Judge No. 2, Oscar R. P. Herrera, who was presiding over the case into Iván's disappearance.²⁸

92. On October 15, 2007, interlocutory decree 516/07 was issued in the case of "Millacura Llaipén, María Leontina/Forced Disappearance Complaint," in which the federal judge presiding over the examining phase of the proceedings concluded that there was not sufficient information to classify the absence of Iván Torres as a forced disappearance. The judge decided that while free on their own recognizance, officers Fabián Alcides Tilleria and Juan Sandro Montecino would stand trial on charges of unlawful deprivation of freedom; she also ordered officer Marcelo Miguel Alberto Chemin to stand trial for a violation of domicile for events that transpired prior to the disappearance of Iván Torres [who was detained in September 2003]. However, the judge also decided to dismiss the case against the three officers named above and against José Luis Bahamonde, Rosana Elisabet Soler, Pablo Miguel Ruiz, Mario Alberto Gómez and Hernán Eliseo Leiva "with regard to the forced disappearance of a person, in keeping with the American Convention."²⁹ The charges against the other persons under investigation for other crimes related to this case were also dismissed.

93. In that ruling, the judge ordered handwriting tests and gave orders to find Luis Patricio Oliva and Luis Alberto Bolivar in order to take their testimony. Finally, the judge ordered a continuance "as the search for Iván Eladio Torres deepens and inquiries are pursued to shed light on his absence, which is thus far unexplained."³⁰

94. The Federal Prosecutor of first instance appealed the ruling. As a result, the Superior Court delivered ruling 42/2008³¹ on February 28, 2008, in which it overturned the dismissal, stating that there was merit in the case. It ordered that the investigations in the case be pursued. The following was part of the Court's reasoning:

(...) One finds that to decide the question, the lower-court ruling relied on a number of conflicting premises, which undermines the reasoning that led the court to its conclusion.

(...)

Another fact to consider is that the complainant's original statement regarding police harassment of Iván was consistently confirmed by various witnesses in the case.

(...)

The factors described here draw a picture that, at the very least, makes it impossible to definitively close the case against those for whom the lower court dropped the charges.

(...)

²⁸ Copy of the petition filed by Valeria Torres on October 27, 2003. Annex 13.

²⁹ Copy of the Judgment of October 15, 2007, Annex 14.

³⁰ *Idem*.

³¹ Copy of the ruling 42/2008 of February 28, 2008, Annex 15.

While it is true that there is no direct evidence implicating personnel of the First Sectional Precinct in Torres' disappearance, there are rational indicia pointing to the fact that events may have happened along the lines suggested in the complaint. (Emphasis added.)³²

95. Thus, in the first operative paragraph of its decision, the Appellate Court overturned the dismissals ordered in the case of Fabián Alcides Tillería, Juan Sandro Montecino, Marcelo Miguel Alberto Chemín, José Luis Bahamonde, Rosana Elizabeth Soler, Pablo Miguel Ruiz, Mario Alberto Gómez, Hernán Eliseo Leiva, Jorge Alejandro Bahamonde, Nicolás Alfredo Fajardo, Sergio Omar Thiers, Sebastián Florentino Sifuentes, Santiago Antonio Rodríguez, Héctor Enrique Concha and Roberto Damián Soto, reasoning that there were no grounds either to bring them to trial or to dismiss the charges. It therefore ordered that the investigation continue.³³

96. From the Commission's analysis, it is evident that starting on October 4, 2003, the Argentine authorities were aware of the disappearance of Iván Eladio Torres thanks to the information supplied by Mrs. María Leontina Millacura Llaipén. That day, several occasions thereafter and to this day, she has gone to the First Sectional Precinct of Comodoro Rivadavia and to other authorities to inquire about her son's whereabouts. Mrs. Millacura Llaipén and her legal representatives have remained actively engaged in the search for Iván Torres; they have provided evidence and requested that measures be taken to solve the case. In the final analysis, six and a half years have gone by and the State has still not explained the facts in this case, it has still not established the whereabouts of Iván Eladio Torres and has still not punished anyone for his disappearance.

III. CONSIDERATIONS OF LAW

A. General observations on forced disappearances

97. In Article 1 of the Inter-American Convention on Forced Disappearance of Persons, which entered into force on June 9, 1994, the States Parties undertake the following:

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

98. When it ratified that Convention on February 28, 1996, the Argentine State undertook the commitment to abide by its provisions.

99. The Court has addressed the practice of forced disappearance and has written 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

³² *Idem*.

³³ Copy of the ruling 42/2008 of February 28, 2008, Annex 15. See also note from the State of July 10, 2009 and annexes, file before the Commission, Appendix 3.

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.³⁴

100. The case law of the inter-American system has established that the forced disappearance of persons is an unlawful act that gives rise to a multiple and continuing violation of a number of rights protected by the Convention; it is a crime against humanity. Forced disappearance also means that the obligation to organize the apparatus of the State in such a manner as to guarantee the rights recognized in the Convention has been disregarded.³⁵ By directly undertaking or tolerating actions intended to effect a forced or involuntary disappearance, by failing to investigate it properly and, where appropriate, punishing those responsible, the State is in violation of its obligation to respect the rights protected under the American Convention and to ensure their free and full exercise.³⁶

101. The Inter-American Convention on Forced Disappearance of Persons includes the essential factors that distinguish a forced disappearance from other criminal acts, such as kidnapping, unlawful detention or abuse of authority. Article II of the Inter-American Convention on Forced Disappearances of Persons introduces the concept of "forced disappearance" as developed in the jurisprudence of the Inter-American Commission and Inter-American Court of Human Rights, as follows:

For the purposes of this 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.

102. 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 criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations. Similarly, the Court has interpreted the continuous nature of the phenomenon of forced disappearance where it wrote that:

forced disappearance 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.³⁷

103. While these provisions underscore obligations that the Argentine State had already undertaken as a party to the American Convention, their relevance to the instant case is how specific Article III is with respect to the State's obligation to investigate cases of forced disappearance and the emphasis that Article VII places on the need to properly classify the crime, as will be examined below.

³⁴ I/A Court H.R., *Blake Case*, supra, paragraph 66.

³⁵ I/A Court H.R., *Case of the 19 Tradesman v. Colombia*. Judgment of July 5, 2004, Series C No. 109, paragraph 142.

³⁶ I/A Court H.R., *Case of Paniagua Morales et al.*, Judgment of March 8, 1998, Series C No. 37, paragraph 90.

³⁷ I/A Court H.R., *Blake Case, Preliminary Objections*, Judgment of July 2, 1996. Series C No. 27, paragraph 39.

104. The Court has written that “faced with the particular gravity of such offenses and the nature of the rights harmed, the prohibition of the forced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*.”³⁸

105. The Commission’s established jurisprudence holds that the forced disappearance of human beings is a violation of many rights under the Convention that continues in time so long as the whereabouts of the victim or the victim’s remains has not been established.³⁹ It should be understood that for the family and for society in general, the experience is that of a forced disappearance, with all its consequences, until the whereabouts of the victim or the victim’s remains are located and identified.

106. The Commission considers that in the case *sub examine* it has sufficient information to conclude that agents of the State participated in the disappearance of Iván Eladio Torres. The Commission attributes particular relevance to the statements made by friends, family members and police officers, all of which are in the court record of the case and reveal how the police were constantly monitoring Iván Eladio Torres and how he had been detained by police on previous occasions, particularly the episode that occurred in September 2003.

107. Particularly telling is the statement that Walter Marcos Mansilla gave on October 16, 2003, to the effect that:

[Iván]... once told me that they picked him up in a patrol car and took him to Km. 8. Then they beat him up and he had to walk home on foot.⁴⁰

108. In the statement she gave to the First Sectional Precinct of Comodoro Rivadavia on October 21, 2003, Tamara Elizabeth Bolívar recounted the following about Iván:

One time they picked him up and drove him to Km. 8 ... They left him there barefoot. They beat him up, too. He told me they fired a couple of shots at him. Then they left Iván out there at Km. 8, near a crossroads, after taking his clothes and shoes ...⁴¹

109. On October 22, 2003, Cristian Eduardo Gamin made a statement at the First Sectional Precinct of Comodoro Rivadavia, and mentioned the following:

[Iván] once told me that the police had grabbed him and left him at Km. 8, after beating him up and taking his shoes. ...⁴²

³⁸ I/A Court H.R., *Case of Goiburú et al. v. Paraguay*. Judgment on the Merits, Reparations and Costs. Judgment of September 22, 2006. Series C No. 153, paragraph 84.

³⁹ IACHR. Case 12,588 Isabela Velasquez *et al.* Guatemala. Report 40/00 of April 13, 2000, paragraph 64. IACHR, Complaint filed with the I/A Court H.R., *RAINER IBSEN CÁRDENAS and JOSÉ LUÍS IBSEN PEÑA v. BOLIVIA*, May 12, 2009. Available at: <http://www.iachr.org/demandas/12.529%20Rainer%20Ibsen%20Cardenas%20y%20Jose%20Luis%20Ibsen%20Pe%C3%B1a%20Bolivia%2012%20mayo%2009%20ENG.pdf>.

⁴⁰ Copy of the testimonial statement given by Walter Marcos Mansilla, which appears at 11, Volume I, of the Court’s Record of the case, Annex 3.

⁴¹ Copy of the testimonial statement given by Tamara Elizabeth Bolivar of October 21, 2003, at 26, Volume I of the Court’s Record of the case, Annex 3.

⁴² Copy of the testimonial statement given by Cristian Eduardo Gamin, October 22, 2003, which appears at 31, Volume I, of the Court’s Record of the case, Annex 3.

110. On October 23, 2003, Gerardo Atilio Colín, a minor at the time, made his statement. When asked whether, prior to his disappearance, Iván Eladio Torres had told him that he had some problem or was afraid, Colín answered as follows:

Yes, two or three days prior to his disappearance he told me that the police were bothering him. Even when I was walking with him, the police were always threatening him. Once we were on the rocks at the beach and a patrol car came along from Precinct 1 and the police started to take our names and addresses. When they saw Iván, they said 'let's grab the other one.' So they let us go. Later, Iván Torres told me that they took him to Km. 8, beat him up and pretended like they were going to shoot him. As I recall, that time there was a police officer by the name of Bahamonde; he's dark, heavysset, and shorter than I am; I know him because he always hits me...⁴³

111. That same day, October 23, 2003, Luis Patricio Oliva, another minor, also made a statement:

Two or three days earlier, [Iván] told me that he was being threatened, and it was always the people from the First Sectional [Precinct]. They even threatened me four times, one of them was called Bahamonde ... They told me to tell Iván Torres to be careful ..., that the same thing that happened to him would happen to me; they meant they were going to pick me up and beat me up... You know, I've seen them pick up Iván Torres for no reason ...⁴⁴

112. Mauricio David Agüero made a similar statement:

... One time Walter Mansilla and the guys said that Iván had been picked up by the police and then abandoned at Km. 8.⁴⁵

113. As for the participation of State agents in the disappearance of Iván Eladio Torres, the Commission considers that an important piece of evidence is the letter dated January 9, 2005, which David Hayes wrote in his own hand while in custody at the First Sectional Precinct on October 3, 2003. The letter reads as follows:

I'm David Hayes and I'm a witness in the case of Iván Torres. However, my life is in danger, because a death threat was made against me. But I'm willing to testify in the North American court. From a window in a bathroom, I saw them hitting him. A number of police officers were beating him up, one of them was officer Montesino, Chief Teyeria –he's the one who threatened my life. I can identify the police officers who were there that night and I can show the place where he fell unconscious. They grabbed him and dragged him down a staircase that leads to the regional unit. Another police officer was wiping up the stairs to the regional unit. It was in the early morning hours that I saw them bring Iván in and they beat him. I didn't tell everything I saw, but I did ask if I could amplify my statement, and he told me I had every right, but then he was with Chief Tiyeria and they looked at me and laughed, so I kept quiet. David Hayes 28.

114. The letter confirms that Iván Eladio Torres was at the First Sectional Precinct after being detained by agents of the Chubut provincial police force; it also suggests that in his statement given as testimony, David Alberto Hayes, the last person to see Iván prior to his disappearance, had not told everything he knew because his life had been threatened.

⁴³ Copy of the testimonial statement given by Gerardo Atilio Colín, October 23, 2003, which appears at 47, Volume I, of the Court's Record of the case, Annex 3.

⁴⁴ Copy of the testimonial statement given by Luis Patricio Oliva on October 23, 2003, which appears at 50, Volume I, of the Court's Record of the case, Annex 3.

⁴⁵ Copy of the testimonial statement given by Mauricio David Agüero on October 20, 2003, which appears at 18 Volume I of the Court's Record of the case, Annex 3.

115. In its report on the merits, based on its review of all the information in the case file, the Commission noted that while the State had mentioned three possible theories to explain Iván Torres' disappearance, it offered no evidence or indicia that might explain or serve as the basis for the various theories it had about Iván Torres' disappearance while he was in police custody.

116. As all the distinctive features of a forced disappearance are present in the case *sub examine*, it must be pointed out that when it ratified the Inter-American Convention on Forced Disappearance of Persons on February 28, 1996, the Argentine State undertook a commitment "[n]ot to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees," as provided in Article I(a) of that instrument. Secondly, the crime of forced disappearance is continuous or permanent as its effects continue in time as long as the fate or whereabouts of the victim has not been determined. The distinctive features of forced disappearance include the means used to conceal any evidence of the crime, the parties responsible and the fate of the victim. Another distinctive feature is the fact that the failure to clarify the facts and determine those responsible instills terror not just in the immediate victim but also in his family and in society as a whole. When these distinguishing characteristics are present, the State is in continuing violation of its international obligations; hence the Inter-American Convention on Forced Disappearance of Persons applies to the present case.

117. For all the foregoing reasons, the Commission concludes that by virtue of the forced disappearance of Iván Eladio Torres, the Argentine State has failed to comply with its obligations under Article I of the Inter-American Convention on Forced Disappearance of Persons.

B. The right to personal liberty under Article 7 of the American Convention

118. Article 7 of the American Convention protects the right to personal liberty and reads as follows:

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

119. The Inter-American Court has held that subparagraphs 2 and 3 of Article 7 establish the limits on the State's power and expressly prohibit unlawful and arbitrary detentions. The Court has held that:

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his personal 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 or methods that – although qualified as legal – may be considered incompatible regarding for the fundamental rights of the individual, because they are, among other matters, unreasonable, unforeseeable or out of proportion.⁴⁶

120. Following this same line of thought, the Commission has written that the analysis to determine whether a detention meets the standards established in subparagraphs 2 and 3 of Article 7 of the American Convention must be done in three stages:

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.⁴⁷

1. Concerning the detentions made prior to Iván Eladio Torres' forced disappearance

121. Prior to his forced disappearance, Iván Eladio Torres had been deprived of his liberty on more than one occasion and without the proper court order. The testimony of María Leontina Millacura Llaipén, Walter Marcos Mansilla, Tamara Elizabeth Bolívar, Luis Patricio Oliva and Gerardo Atilio Colín confirm this fact. In their own statements, police personnel point out that Iván was frequently detained for “identification purposes,” pursuant to Law 815. In their testimony, next of kin and friends of Iván Eladio Torres said that some months prior to his disappearance, Iván Eladio Torres had been detained and taken to the place commonly referred to as Km. 8, where police had allegedly subjected him to a mock execution.

122. It is similarly confirmed by the statement made by police officer Martín Betbede who reported that in September 2003, Iván Eladio Torres and three other young men were brought in for identification pursuant to Law 815, and released shortly thereafter.⁴⁸

123. The reports that the State submitted to the Commission confirmed that the Daily Log for the Radio Dispatch Center for 25/9/2003 to 26/9/2003 shows that at around 3:12 a.m., in response to a telephone call reporting two suspicious persons, the First Sectional Precinct was alerted and dispatched patrol car 469 to the scene. Iván Eladio Torres and Diego Álvarez were taken into custody. In its communications, the State acknowledged that it had confirmed the fact that this detention was made, but was not entered into the Precinct's daily log.

124. Chief Fabián Alcides Tillería gave testimony in the Millacura Llaipén case.⁴⁹ When asked whether he knew Iván Eladio Torres and whether he had knowledge of or had learned that Iván Eladio Torres had been detained or brought into the First Precinct in the months of September and October 2003, he answered as follows:

⁴⁶ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 78, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 83.

⁴⁷ IACHR, Report No. 53/01, Case 11,565. *Ana, Beatriz and Celia González Pérez*. Mexico, April 4, 2001, paragraph 23.

⁴⁸ Copy of the testimonial statement given by Officer Martín Omar Betbede on November 11, 2003, which appears at 124, Volume I, of the Court's Record of the case, Annex 3.

⁴⁹ Copy of the testimonial statement given by Chief Fabián Alcides Tillería on December 11, 2003, which is at 298, Volume II, of the Court's Record of the case, Annex 3.

Whether he knows Iván Torres. And with respect to whether he was detained and temporarily held on September 26 of this year at around 3:00 a.m., in the company of another individual, ... As to Torres, there was nothing pending against him, nor any cause or reason for his detention; so I ordered him off the precinct premises... On September 26, 2003, Iván Eladio Torres was brought into the Precinct and it was not entered into the Daily Log. This was a decision of the officer on duty. I don't know why he didn't enter it into the log, but he should have.

125. In his testimony, police inspector Juan Sandro Montesino stated the following:

On September 26 an alert was sent out that ... there were two suspicious persons wearing hoods ... at around 3:10 a.m. I was not personally involved when the two individuals were brought in for holding ... I was told that one was named Álvarez and the other Torres. Precinct Chief Tellería was immediately called at his home at around 3:30 a.m. ... The Chief, who knew Torres, ordered that he be identified and let go ... in other words, that he leave the Precinct.⁵⁰

126. Furthermore, the record shows that on November 6, 2003, the Comodoro Rivadavia Investigation Unit, which was part of the Chubut Provincial Police Force, issued a reported addressed to the Chief of the Regional Unit, which in part read as follows:

As I am required, I am writing to you to inform you that in connection with the disappearance of Iván Eladio Torres and the statements made by a witness whose identity is being kept confidential, it has been established that this person [Iván Torres] was in fact detained on September 26, 2003, in the early morning hours.

The information is based on the log of the Radio Dispatch Center for that day. ...⁵¹

127. The Commission finds, therefore, that Iván Eladio Torres was deprived of his liberty, without the corresponding court orders, for purposes of identification under Law 815. Specifically, the statements made by Chubut provincial police officers themselves establish that in fact Iván Eladio Torres was detained by police driving patrol car 469 and taken to the First Sectional Precinct, from which he was released that same day; his detention was never recorded in the Precinct's Daily Log for that day, as it should have been.

2. Concerning the detention that resulted in his disappearance

128. Iván Eladio Torres was detained in the early morning hours of October 3, 2003, by members of the Chubut provincial police force who were patrolling in police car 469 in the vicinity of the Plaza Bitto. He was last seen in the First Sectional Precinct. The State simply reported that three hypotheses have been pursued in connection with Iván Eladio Torres' disappearance: a) that police personnel are involved; b) that the disappearance can be blamed on the "Gallardos"⁵², and c) that Torres left town on his own.⁵³

⁵⁰ Copy of the testimonial statement given by police inspector Juan Sandro Montesino on January 13, 2004, which is at 413, Volume II, of the Court's Record of the case, Annex 3.

⁵¹ Report that appears at 426, Volume II, of the Court's Record of the case, Annex 3.

⁵² The case records show that in her testimony, Tamara Elizabeth Bolívar stated that "she lived with Miguel Gallardo and had a baby by him; the two separated because they couldn't get along and the baby was taken away from her. Because she had no place to live, she started living at the home of Fabiola Torres, which is when the Gallardos started to have problems with Iván." See the Court's Record of the case, Annex 3.

⁵³ Report of the Comodoro Rivadavia Investigations Unit, October 21, 2003, which is at 423, Volume II, of the Court's Record of the case, Annex 3.

129. Concerning the events of October 3, 2003, it is important to point out that nowhere is it alleged that Iván Eladio Torres was caught *in flagrante*, in the commission of criminal acts; quite the contrary, the record shows that the victim was waiting for his friends in the Plaza Bitto area when agents of the State proceeded to detain him without a court order.

130. As for the arbitrary nature of the detention, in previous cases the Commission has held that the term "arbitrary" is synonymous with "irregular, abusive, contrary to law" and that a detention is arbitrary when it occurs a) for reasons or according to procedures other than those prescribed by the law or b) pursuant to a law the basic purpose of which is incompatible with respect for the individual's right to liberty and security."⁵⁴ For its part, the United Nations' Human Rights Committee has stated that the "notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice."⁵⁵

131. In the case *sub examine*, the Commission considers that the State has violated subparagraphs 2 and 3 of Article 7 of the Convention since, as the case file shows, Iván Eladio Torres was deprived of his liberty unlawfully and arbitrarily, for reasons and under conditions that do not fit those prescribed in either Argentine law or in international standards.

132. The first paragraph of Article XI of the Inter-American Convention on Forced Disappearance of Persons provides that "[e]very person deprived of liberty shall be ... brought before a competent judicial authority without delay, in accordance with applicable domestic law."

133. It has been established that the victim's detention was not in order to bring him before a judge or other legally authorized official so that the latter might determine the lawfulness of his detention; his detention was not even recorded in the Daily Log of the First Sectional Precinct of Comodoro Rivadavia. According to information supplied by the parties, tests proved that the Log Book in question had been adulterated in 2003.

134. The report on the tests on Daily Log No. 10 for 2003 to determine whether it had been tampered with is a matter of record. The experts with the National Constabulary's investigative arm reported that:

The thorough analysis done of "Daily Log" No. 10/03 found first that the pages are not in proper sequence: page number 184 is followed by page number 177, with no notation to explain the lack of sequence. After page 177, the sequence continues until page 200, where the book ends. Furthermore, there is significant deterioration in the center of the book's binding, between pages 186 and 187, and the pages are not properly attached. Graph No. 19 shows that page 186 was cut and, by means of some adhesive material, was attached to the next page, and the adhesive runs along the bottom of the log from pages 187 to 198, and attaches to page number 199. All the sections of the book are composed of four pages, front and back, stitched together with white thread in the center. However, the place where the sequence is disrupted -page 184 followed by page 177- leaves two sections with only two pages each, front and back. As for the writing throughout the log, there are entries scratched out here and there that do not appear to be very significant. However, at page 59, on lines 20 and 21, changes have been made to the original entries, which were erased using white-out corrective liquid. The same thing happens at lines 21 to 24 on page 60. In conclusion, the pages of Daily Police Log No. 10/03 of the First Precinct of Comodoro Rivadavia are out of sequence after page 184. The log contains erasures made with corrective liquid, at pages 59 (lines 21 to 24) and page number 60 (lines numbers 21 to 24). The steps taken to try to reveal the information blotted out by the

⁵⁴ IACHR, Report 35/96, Case 10832, *Luis Lizardo Cabrera*, Dominican Republic, April 7, 1998, paragraph 66.

⁵⁵ HRC, Communication No.560/1993, *A v. Australia*, April 30, 1997, section 9.2.

corrective liquid were unsuccessful.⁵⁶

135. The foregoing makes clear that the personnel at the First Sectional Precinct manipulated the “Daily Log” by cutting pages and making changes, without the required notation to explain the reason for the changes.

136. The Commission deems that the State violated Article 7(6) of the American Convention, by denying Iván Eladio Torres the opportunity to a prompt and effective recourse in order to have the lawfulness of his detention determined, and by keeping him deprived of his liberty in a place other than the official detention facilities or facilities equipped for that purpose, without the proper institutional controls like records or reports to show the date of the victim’s detention and the manner and conditions of his detention.

137. The Commission also finds that the State has violated Article XI of the Inter-American Convention on Forced Disappearance of Persons, which reads as follows:

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

138. Summarizing, Article 7 of the American Convention sets forth the positive obligations that impose specific or special requirements both on the agents of the State and on third parties acting with their tolerance or consent.⁵⁷ The Commission considers that the State has failed to comply with those requirements. The absence of this set of basic legal protections is consistent with the pattern of police abuse in Comodoro Rivadavia. In effect, as was previously stated, representatives of civil society have complained about, and various media outlets have documented, the practice of arbitrary detentions and police abuse of young people in that city.

139. The Inter-American Court has held that police practices that include detentions for the sake of verifying identity are incompatible with respect for fundamental rights, including presumption of innocence and existence of a court order for detention –except in situations of flagrancy-.⁵⁸

140. The Commission considers that this information is sufficient to conclude that the earlier detentions of Iván Eladio Torres and the one that resulted in his disappearance were clear instances of abuse of power; they were not ordered by a competent authority and their intent was not to bring him before a judge or another official authorized by law to rule on the legality of his detention.⁵⁹

141. For all the foregoing reasons, the Commission declares that the Argentine State violated Article 7 of the American Convention, in relation to Article 1(1) thereof, to the detriment of

⁵⁶ Expert examination done by the investigative arm of the National Constabulary on Police Log No. 10 for 2003. See court record of the case, Annex 3.

⁵⁷ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 81.

⁵⁸ I/A Court H.R., *Case of Bulacio*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 137.

⁵⁹ I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006 Series C No. 162, para. 109.

Iván Eladio Torres, and Article XI of the Inter-American Convention on Forced Disappearance of Persons.

Right to humane treatment under Article 5 of the American Convention, and failure to comply with the obligations to investigate and punish torture, as set forth in the Inter-American Convention to Prevent and Punish Torture.

142. Article 5 of the American Convention read as follows:

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.

[...]

143. To establish the content and scope of the general provision contained in Article 5(2) of the American Convention, the Court has taken into account the Inter-American Convention to Prevent and Punish Torture.⁶⁰ The Court has put particular emphasis on Article 2 of that Convention, which defines torture as:

[...] any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish [...]⁶¹

144. These guarantees are non-derogable and must be applied no matter what the circumstances. Detained persons have the right to live in conditions of detention that are compatible with their personal dignity and the State must guarantee the right to life and to humane treatment.⁶² "The way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."⁶³

145. Here it is important to recall that, as the Court has written, "a person who is unlawfully detained is in an exacerbated situation of vulnerability creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated."⁶⁴

146. Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture provide that:

⁶⁰ I/A Court H.R., *Case of Tibi vs. Ecuador*, Judgment of September 7, 2004, Series C No. 114, paragraph 145.

⁶¹ *Inter-American Convention to Prevent and Punish Torture*, adopted in Cartagena de Indias, Colombia, December 9, 1985, at the fifteenth regular session of the General Assembly. Signed by Argentina on February 10, 1986.

⁶² I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraphs 126 and 138; *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, paragraph 165; and *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 87.

⁶³ I/A Court H.R., *Case of Bulacio*, supra, paragraph 126, citing the Eur. Court H.R., *Iwanczuk v. Poland* (App. 251196/94) Judgment of November 15, 2001, paragraph 53.

⁶⁴ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 96, citing I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70 paragraph 150; I/A Court H.R., *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69, paragraph 90; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C, No. 63, paragraph 166. See also, ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25, para. 167.

Article 1

The State Parties undertake to prevent and punish torture in accordance with the terms of th[e] Convention.

Article 6

In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.

The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.

The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Article 8

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

147. Apart from the events of October 3, 2003, which led to Iván Eladio Torres' disappearance and the circumstances under which his detention and disappearance occurred, other important considerations in the case *sub examine* include the uncertainty that his deprivation of liberty caused, which allows one to reasonably suppose that Iván Eladio Torres experienced fear, anxiety, a sense of vulnerability and defenselessness for the duration of his detention. It is reasonable to assume that the victim's mental and moral integrity were affected as a consequence of his detention, his isolation *incommunicado*, and finally his disappearance. Another important consideration is the police authorities' treatment of him on the occasions on which he was detained, as attested to by the statements made by friends, family members and the letter written by David Alberto Hayes, where he states that he witnessed how Iván was brutalized by police personnel inside the premises of the First Sectional Precinct, on the day of his disappearance.

148. Another important factor to consider is that the circumstances under which Iván Eladio Torres was deprived of his liberty facilitated the violation of the victim's personal integrity because of the forced isolation to which he was subjected⁶⁵ at the First Sectional Precinct, which would have affected his mental and moral integrity.

149. Starting with its very first contentious case, the Inter-American Court has held that the deprivation of communication constitutes cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being, and is thus a violation of Article 5 of the Convention.⁶⁶ The Court has also held that even in cases where the deprivation of liberty is lawful,

[o]ne of the reasons that *incommunicado* detention is considered to be an exceptional instrument is the grave effects it has on the detained person. Indeed, isolation from the outside world produces moral and psychological suffering in any

⁶⁵ U.N. OHCHR. "Forced or Involuntary Disappearances". Fact Sheet No. 6, Geneva. 1993, pp. 1 and 2.

⁶⁶ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C N° 4, paragraph 156.

person, places him in a particularly vulnerable position, and increases the risk of aggression and arbitrary acts in prisons.⁶⁷

150. The Inter-American Court has also written that “the threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered ‘psychological torture’,”⁶⁸ and that “it is inherent in human nature that any persons subjected to violence and ill-treatment ... (unlawful detention, cruel, inhuman and degrading treatment, and death), experiences corporal pain and deep suffering and anguish; consequently, this damage does not require proof.”⁶⁹

151. While the Commission does not have the evidence to prove precisely how long Iván Eladio Torres was deprived of his personal liberty, a brief period of detention is enough to constitute an infringement of his mental and moral integrity according to the standards of international human rights law; it can also be assumed that the treatment he received during his isolation was inhuman, degrading, and aggressive.⁷⁰

152. The Commission observes further that the State’s failure to act with due diligence is obvious since, from the time the family of the victim filed complaints, it failed to conduct a serious, impartial and effective investigation within a reasonable period as the principles of due process dictate, to shed light on the facts and, most of all, to identify and punish the material and intellectual authors of the violations, in compliance with the obligation it undertook in Article 1(1) of the American Convention, which was to ensure the right to humane treatment.

153. Based on the foregoing considerations, the Commission concludes that the Argentine State violated Article 5 of the American Convention, in relation to Article 1(1) of that Convention to the detriment of Iván Eladio Torres, both by the way in which he was treated by the authorities on the various occasions when he was taken into custody, and the treatment that led to his disappearance. The State also violated articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in his detriment.

4. The right to life under Article 4 of the American Convention

154. Article 4(1) of the American Convention reads as follows:

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.

155. The Inter-American Court has held the following with regard to the right to life:

the right to life plays a fundamental role in the American Convention as it is the essential corollary for the exercise of the other rights. When the right to life is not respected, all the other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it. Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be

⁶⁷ I/A Court H.R., *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C N° 35, paragraph 90.

⁶⁸ I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 92.

⁶⁹ I/A Court H.R., *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, paragraph 248.

⁷⁰ I/A Court H.R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003. Series C No. 99, paragraph 98. *Case of Bámaca Velásquez*, paragraphs 128 and 150; *Case of Cantoral Benavides*, paragraphs 82 and 83; *Case of the “Street Children” (Villagrán Morales et al.)*, paragraphs 162 and 163.

deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.⁷¹

156. The Court has pointed out that forced disappearance multiple violations of the Convention, which include “secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention.”⁷²

157. Iván Eladio Torres was detained by police in the early morning hours of October 3, 2003 and his whereabouts are still unknown. The Commission considers that given the history of threats, harassment and abuse that Iván Eladio Torres had with police officers from the First Sectional Precinct, the fact that he disappeared more than six years ago is sufficient to conclude that his life is in obvious danger from police officers.

158. The Commission observes that the case law of the inter-American system seeks to establish the full scope of the international responsibility incurred in cases of forced disappearance in which the intrinsic risk to the life of an individual is undeniable. The system also seeks to have the States adopt all measures within their reach to establish the whereabouts of the victim and, if possible, disprove the presumption of a violation of the right to life.

159. As the guarantor, the State has an obligation to offer explanations as to the victim’s whereabouts and conduct a prompt investigation of the facts.⁷³ The Commission finds that the State has failed to comply with its obligation to guarantee the right to life by means of a serious, diligent and impartial investigation. The evidence shows that although investigations were done, they were riddled with irregularities and delays and were ultimately ineffective.

160. In addition to the foregoing, the petition of *habeas corpus* that Iván Eladio Torres’ sister filed was utterly ineffective, even though said petition is one of the appropriate remedies for the protection of the right to life.⁷⁴ The record shows that the court authorities filed the petition without taking any action.

161. As for the persons and institutions upon whom this obligation rests, the Inter-American Court has written that

[t]his comprehensive protection of the right to life by the State does not involve only legislators, but all State institutions and those who must protect security, whether they are police or armed forces of the State. Due to the above, the States must adopt such measures as may be necessary, not only to prevent, try and punish those responsible for deprivation of life as a consequence of criminal acts, in general, but also to forestall arbitrary executions by its own security agents.⁷⁵

⁷¹ I/A Court H.R., *Case of the 19 Tradesmen v. Colombia*, paragraph 153, and *Case of the “Street Children” (Villagrán Morales et al.)*, paragraphs 144-145. See also General Comment No. 6 (Sixteenth session, 1982), paragraph 3; *María Fanny Suárez de Guerrero v. Colombia*, Communication N° R.11/45 (February 5, 1979), U.N. Doc. Supp. N° 40 (A/37/40) at 137 (1982), p. 137. Cited by the I/A Court H.R., in *Case of Sánchez v. Honduras*, paragraph 110.

⁷² I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 157.

⁷³ I/A Court H.R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003. Series C No. 99, para. 112.

⁷⁴ I/A Court H.R. *Case of Velásquez Rodríguez*, Judgment on the Merits of July 29, 1988, Series C, No. 4, para. 65.

⁷⁵ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 129.

162. The purpose of domestic proceedings is to establish individual blame for violations of fundamental rights committed either by State agents or persons who are not agents of the State, whereas the purpose of international proceedings is to determine whether the State has incurred international responsibility for violation of human right protected by treaties and other international instruments. While the domestic proceedings must identify the author of the violation in order to be able to convict him, in international proceedings the identity of the state agent who committed the human rights violation need not be known. To find the State internationally responsible, it need only be shown that the violation was committed by an agent of the State, even when his identity has not been established. Even assuming that the individual authorship of the violation has not been determined, the State must still compensate the victim or his or her next of kin if the violation was committed by an agent of the State.

163. In its own case law, the Inter-American Court has held that

[t]he State must respect the right to life of all persons under its jurisdiction, enshrined in Article 4 of the American Convention. [...] The role of the State as guarantor with respect to this right carries with it the obligation to prevent situations that might lead, by action or omission, to negatively affect it. ... The State is under the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility by supplying valid evidence.⁷⁶

164. The State has not given the Commission a satisfactory and convincing explanation of what happened to Iván Eladio Torres, who disappeared while in the custody of agents of the Argentine State on October 3, 2003, despite the fact that –as the Court has written– “[i]n its role as guarantor, the State does in fact have the responsibility to guarantee the rights of individuals in its custody as well as that of supplying information and evidence pertaining to what has happened to the detainee.”⁷⁷ The Commission therefore finds that the Argentine State did not comply with its obligation to respect the right to life of Iván Eladio Torres, in violation of Article 4(1) of the American Convention, in relation to Article 1(1) thereof.

5. Violation of the right to a fair trial and the right to judicial protection under the American Convention

165. The Inter-American Commission considers that the Argentine State failed to comply with its obligation to conduct an adequate and effective investigation of the unlawful detention and disappearance of Iván Eladio Torres, in violation of articles 8, 25 and 1(1) of the American Convention.

166. Article 8 of the Convention provides that

[e]very 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.

⁷⁶ I/A Court H.R., *Case of Bulacio*. Merits, Reparations and Costs. Judgment of September 30, 2003. Series C N° 100, paragraph 138. See also, I/A Court H.R., *Case of the Urso Branco Prison*, Provisional Measures, Order of April 22, 2004, operative paragraph 6.

⁷⁷ I/A Court H.R., *Case of Bulacio*. Merits, Reparations and Costs. Judgment of September 30, 2003. Series C N° 100, paragraph 138 and *Cantoral Benavides Case*, para. 55. The European Court has extensive case law along similar lines: Eur. Court HR, *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, para. 61; *Eur. Court HR, Ribitsch v. Austria*, *supra* note 78, para. 34; and *Eur. Court H. R., Case of Tomasi v. France*, *supra* note 78, paras. 108-111. Cited by the I/A Court H.R., *Case of Sánchez v. Honduras*, *op.cit.* para. 111.

167. Article 25 of the Convention reads as follows:

[e]veryone 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.

168. Article 1(1) of the American Convention states that

[t]he 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.

169. Under Article 1(1) of the American Convention, States parties to the inter-American system for the protection of human rights have an obligation to investigate human rights violations, punish those responsible and, where appropriate, compensate the victims of those violations or their next of kin. The Court has explained these provisions of the Convention as follows

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. ... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention."⁷⁸

170. In this respect, the content of Article 25 is closely linked to Article 8(1), which provides that everyone has the right to a hearing with due guarantees, within a reasonable period and by a competent, independent and impartial tribunal and gives the victim the right to have violations of rights protected by the American Convention effectively investigated by the authorities, to have the responsible parties prosecuted by the courts and appropriately punished, and to be properly compensated for the damages and injuries sustained.⁷⁹ In effect, Article 8 of the American Convention references a set of procedural requirements that must be observed in the various phases of the proceedings in order to be able to speak of effective and appropriate judicial guarantees under the Convention.⁸⁰ That article enunciates rights and guarantees which are distinct but stem from the same basic idea and which, taken together, make up a single right not specifically defined in the narrower sense of the term, but whose unequivocal purpose is to ensure to every person his or her right to due process.⁸¹

171. Furthermore, both Article 8 and Article 25 of the American Convention "are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial

⁷⁸ I/A Court H.R., *Case of Loayza-Tamayo v. Peru*, Reparations, Judgment of November 27, 1998, paragraph 169; *Case of Velásquez Rodríguez*, Preliminary Objections, Judgment of 26 June 1987. Series C No. 1, paragraphs 91, 90 and 93, respectively

⁷⁹ I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 205; I/A Court H.R., *Case of Durand and Ugarte*. Judgment of August 16, 2000. Series C No. 68, paragraph 130.

⁸⁰ I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)*, Advisory Opinion OC 9/87 of October 6, 1987, Series A. No. 9, paragraph 27.

⁸¹ European Court of Human Rights, *Case of Golder*, Judgment of February 21, 1975, Series A, No 18, paragraph 28, Concerning Article 6 of the European Convention on Human Rights, wherein the protected rights are substantially the same as those protected in Article 8 of the American Convention.

guarantees."⁸² Article 25(1) of the American Convention incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights.⁸³ For such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.⁸⁴ Accordingly, the Inter-American Court has concluded that a "remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective."⁸⁵

172. Inter-American case law has established that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them to the end⁸⁶ and that in such cases, this is the proper way to establish the facts, judge those responsible and establish the corresponding punishment, in addition to providing for other forms of reparation.

173. The Court has also held that the obligation to investigate cases of violations of these rights arises from this general obligation of guarantee; in other words, Article 1(1) of the Convention, together with the substantive right that must be protected or ensured.⁸⁷ Thus, in cases of extrajudicial executions, forced disappearance and other grave human rights violations, the Court has found that conducting a prompt, genuine, impartial and effective investigation *ex officio* is a fundamental and conditioning factor for the protection of certain rights that are affected or annulled by these situations, such as the rights to personal liberty, humane treatment and life.⁸⁸

174. The detention and forced disappearance of Iván Eladio Torres by agents of the State demanded that the authorities exhaust every effort to conduct an immediate search, with the necessary and urgent inquiries. This did not happen, despite the complaints filed by his mother, siblings and friends within hours of his disappearance. From the very start, the State was derelict in properly investigating the circumstances of the case.⁸⁹

175. It is a matter of record that the authorities knew of the disappearance of Iván Eladio Torres the day after the events occurred, as his mother went on several occasions to the First Sectional Precinct to ask about the whereabouts of her son. Nevertheless, no steps were taken to locate him. Precinct Chief Tellería said the following about learning of the victim's disappearance:

I learned about it from the mother of Iván Torres, who told the duty officer that she was looking for her son, saying that he had not been home since October 2 of this year. I later learned that earlier she had been speaking with the officer on duty, looking for her son and asking if her son was being detained there or elsewhere... On Saturday the eleventh, when Officer Ruiz told me the news he also said that he told her to come in and file a formal

⁸² I/A Court H.R., Advisory Opinion OC-9/87, paragraph 30.

⁸³ I/A Court H.R., Advisory Opinion OC-9/87, paragraph 24.

⁸⁴ *Idem*, paragraph 24.

⁸⁵ *Idem*.

⁸⁶ I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140; see also IACHR, Report No. 52/97, Case 11,218, Arges Sequeira Mangas, Annual Report of the IACHR 1997.

⁸⁷ *Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140, paragraph 142; *Case of Zambrano Vélez et al.*, paragraph 88, and *Case of La Cantuta*, paragraph 110.

⁸⁸ I/A Court H.R. *Case of Heliodoro Portugal v. Panama*. Judgment of August 12, 2008, para. 115.

⁸⁹ See statement of Mrs. María Leontina Millcura Llaipén, February 14, 2003.

complaint... On Sunday, the matter went public thanks to the media, where the police were already being accused of causing his disappearance. Then, when the mother filed a direct complaint, Judge Herrera, who was on duty, was notified

176. From the records in the case file, the Commission notes that the competent judicial authorities were properly and promptly advised of the disappearance of Iván Eladio Torres, which obligated them to pursue an effective investigation. In the case before the Commission, the State has not offered any information to show that significant measures were taken in the critical days immediately following his disappearance.

177. The Commission recalls the Court's recent finding in the Case of Radilla Pacheco:

[...] In cases of forced disappearances of persons, the formal complaint regarding the facts does not fall exclusively on the next of kin of the victims, especially when it is the government itself who hinders it. In the present case, it is clear that it was [the] next of kin who initially, by their own means, carried out several actions tending to find him, despite the difficulties that characterized the existing political context.⁹⁰

178. The Inter-American Court has held that the State must undertake its obligation to investigate and punish human rights violations in a serious manner. It has written the following:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.⁹¹

179. The fact that no one has been convicted in a case or that, despite the efforts made, it was impossible to establish the facts, does not mean that the State failed to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.⁹²

180. The police officers who were assigned to the investigation of Iván Eladio Torres' disappearance were precisely the officers implicated in the disappearance. By a brief presented on December 1, 2003,⁹³ Mrs. María Leontina Millacura Llaipén brought this fact to the attention of local magistrate No. 2, and asked that measures be taken to have the investigation into her son's whereabouts conducted by police who were not on the Chubut provincial police force. The

⁹⁰ I/A Court H.R. *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009, paragraph 197.

⁹¹ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177.

⁹² IACHR, Annual Report 1997, Report No. 55/97, Case 11,137 (Juan Carlos Abella *et al.*), Argentina, paragraph 412. See also: IACHR, Annual Report 1997, Report No. 52/97, Case 11,218 (Arges Sequeira Mangas), Nicaragua, paragraphs 96 and 97.

⁹³ Copy of the brief of Mrs. Millacura Llaipén, of December 1, 2003, which appears at 211, Volume I of the Case "Millacura Llaipén, María Leontina/Disappearance Complaint".

examining magistrate, however, denied the request. Thus, the impartiality necessary to investigate the case was compromised.

181. On February 16, 2004, Examining Magistrate No. 2, Oscar R.P. Herrera, tried to have himself removed from the case of "Millacura Llaipén, María Leontina/Disappearance Complaint" claiming that María Millacura Llaipén had allegedly said during the proceeding "that she was told that Judge Herrera had ordered the killing of her son Iván Torres."⁹⁴ However, by a decision dated February 25, 2004, the First Criminal Chamber denied Judge Herrera's request that he be disqualified based on the grounds that it found nothing to lead one to assume the possibility of bias, in addition to which neither the public prosecutor nor the complainant had challenged the judge's involvement in the case.⁹⁵

182. The State told the Commission that on May 26, 2004, the Governor of the Province and the State's Attorney filed a request with the Council of the Judiciary seeking prosecution of Judge Oscar Ricardo Publico Herrera. According to the State's report, the grounds cited in the complaint were poor performance of his functions. They cited 5 different cases, including that of Iván Torres. The most serious criticism made of Judge Herrera was that for a long time he had left the investigation into the complaint filed by the mother of Iván Eladio Torres in the hands of the personnel of the First Precinct, who were suspects in the case. The Superior Court of the Province of Chubut, by Agreement 3382, sought prosecution of Judge Herrera, but on different grounds: a delay in deciding court cases.

183. Throughout this report, it has been established that officers on the Chubut provincial police force tampered with the Daily Log of the First Sectional Precinct and never even registered the detention of Iván Eladio Torres that took place in September 2003. It has also been established that various witnesses were, in one way or another, threatened by those police officers, which unquestionably obstructed a proper investigation of the facts.

184. The obligation to investigate any facts involving a violation of rights protected under the Convention and punishment of those responsible requires that both the material and intellectual authors of the human rights violations be investigated, prosecuted and punished.⁹⁶ In the instant case, neither the material nor intellectual authorship of the crimes was properly investigated by the Argentine authorities.

185. The State therefore has the duty to investigate human rights violations, bring those responsible to trial and avoid impunity, which has been defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."⁹⁷ The Inter-American Court has also held that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters

⁹⁴ Judicial proceeding at 604, Volume II, Case of "Millacura Llaipén, María Leontina/Disappearance Complaint."

⁹⁵ Decision that appears at 646, Volume II, Case of "Millacura Llaipén, María Leontina/Disappearance Complaint."

⁹⁶ The Court has written, for example, that "the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H.R., *Case of the Constitutional Court*. Judgment of September 29, 1999. Series C No. 71, paragraph 123. See also I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paragraph 275; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C No. 99, paragraph 186; *Case of Blake, Reparations*, Judgment of January 22, 1999, Series C No. 48, paragraph 65.

⁹⁷ I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 148; I/A Court H.R., *Case of the "19 Tradesman"*. Judgment of July 5, 2004. Series C No. 109, paragraph 175; I/A Court H.R., *Case of Bámaca Velásquez. Reparations, (Art. 63(1) American Convention on Human Rights)*, Judgment of February 22, 2002. Series C No. 91, paragraph 64.

chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."⁹⁸.

186. It is important to note that on October 15, 2007 an interlocutory ruling was issued in the case titled "Millacura Llaipén, María Leontina/Forced Disappearance Complaint" in which the federal judge decided that while free on their own recognizance, officers Fabián Alcides Tilleria and Juan Sandro Montecino were to stand trial on charges of unlawful deprivation of freedom. However, she dismissed the case against them and against officers Marcelo Miguel Alberto Chemin, José Luis Bahamonde, Rosana Elisabet Soler, Pablo Miguel Ruiz, Mario Alberto Gómez and Hernán Eliseo Leiva "with regard to the forced disappearance of a person, in keeping with the American Convention." The judge also ordered a continuance "as the search for Iván Eladio Torres deepens and inquiries are pursued to shed light on his absence, which is thus far unexplained."⁹⁹

187. The Commission observes that the judge presiding over the case decided to dismiss the charges against the accused for lack of evidence. The Commission, for its part, has been able to identify obvious deficiencies in the investigation that the authorities conducted: first, the refusal to take the complaint on the disappearance of Iván Torres; second, the failure to take immediate measures to establish his whereabouts; and, *inter alia*, the fact that the investigation was assigned to the very same police officers that Iván's family and friends had named as being the presumptive authors of the disappearance.

188. The Commission also notes that the authorities were slow in taking each action, obtaining evidence, and bringing the case to trial. It was four years after the complaint was filed that a ruling was delivered by the court of first instance, despite the fact that this was a case of forced disappearance in which immediate action is crucial.

189. Those deficiencies obviated any chance that the case would be conducted in accordance with the principles of due diligence. A poorly conducted or incomplete investigation of the facts makes it difficult to establish blame and may, in the end, mean that the responsible parties are never punished. The State itself admitted as much when the Federal Prosecutor of first instance appealed the October 15, 2007 decision arguing that the circumstances of Iván Torres' disappearance had not been properly established, which prompted the Superior Court to issue ruling 42/2008 on February 28, 2008, overturning the October 15, 2007 decision with regard to the dismissals. The Superior Court held that there was merit to the case and ordered that the investigations be pursued.

190. Nevertheless, the Commission has received no further information from the State regarding any lines of investigation being pursued since that ruling and notes that to this day, no one has been punished, which has created, moreover, impunity.

191. From the evidence in the Commission's case file, in the investigations conducted into Iván Eladio Torres' forced disappearance the judicial authorities have been negligent about gathering the evidence, conducting the preliminary inquiry and, most of all, in being slow to bring the preliminary inquiry to a close and then prosecuting the material and intellectual authors of the crime.

192. The Court has written the following in connection with judicial guarantees:

⁹⁸ I/A Court H.R., *Case of Loayza Tamayo, Judgment on Reparations*, November 27, 1998, Series C, No. 42, paragraph 169 and 170.

⁹⁹ Copy of the ruling that Federal Judge Eva L. Parcio de Seleme issued on October 15, 2007, which the petitioners sent with the e-mail of November 14, 2007.

[...] for true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that “are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof.”¹⁰⁰

193. In the specific case of the forced disappearance of a person, the Inter-American Court has held that:

This phenomenon also presumes “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” Therefore, when it implements or tolerates actions tending to execute forced or involuntary disappearances, when it does not investigate them adequately and does not punish those responsible, when applicable, the State violates the obligation to respect the rights protected by the Convention and to guarantee their free and full exercise of both the victim, and of his next of kin to know his whereabouts of both the victim, and of his next of kin to know his whereabouts.¹⁰¹

194. In fact, Article I(b) of the Inter-American Convention on Forced Disappearance of Persons states that:

The States Parties to this Convention undertake:

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

195. The obligatory investigation by the State must be carried out with due diligence because it must be effective, which means that the investigating body must, within a reasonable time, take all necessary measures to try and obtain results.¹⁰² Furthermore, three basic elements have been established to determine whether the investigation was conducted within a reasonable time: (a) the complexity of the case; (b) the procedural activity of the party concerned, and (c) the conduct of the judicial authorities.¹⁰³

196. Before examining these elements, the Commission observes that the analysis of the reasonableness of the duration of the domestic proceedings begins, in principle, with the complaint and ends with the point at which the definitive and firm judgment in the case is delivered. This is particularly true in criminal cases. The principle of reasonable time must cover the whole proceeding, including any appeals that may be filed.¹⁰⁴

197. As for the complexity of the case, the Commission considers that upon the detention and forced disappearance of Iván Eladio Torres, the State did not act swiftly and effectively to compile the evidence with which to identify the guilty parties, even though it had information supplied by the victim’s next of kin, friends and acquaintances, in their respective statements. The

¹⁰⁰ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 124.

¹⁰¹ I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, paragraph 129.

¹⁰² I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraph 65.

¹⁰³ I/A Court H.R., *Case of the Pueblo Bello Massacre*, paragraph 171; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 160. See also European Court of Human Rights. *Wimmer v. Germany*, no. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, no. 45100/98, § 129, 8 February 2005, and *Todorov v. Bulgaria*, no. 39832/98, § 45, 18 January 2005.

¹⁰⁴ I/A Court H.R., *Case of the “19 Tradersmen”*. Judgment of July 5, 2004. Series C No. 109, paragraph 189, citing I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 120; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94; and I/A Court H.R., *Case of Suárez Rosero*. Judgment of November 12, 1997. Series C No. 35, paragraph 71.

Commission also observes that the State has offered no specific or concrete information to show that the level of complexity of the present case is such that it would be difficult for the judicial process to shed light on the facts denounced. Hence, the unwarranted delay cannot be justified on the grounds of the complexity of the case.

198. As previously noted, the Commission considers that agents of the State were responsible for the detention and subsequent disappearance of Iván Eladio Torres. Their arbitrary and unlawful conduct constituted serious indicia that a forced disappearance had occurred. Given this serious indicia, prosecutors, police officials and other pertinent authorities were called upon to exhaust every effort to conduct an effective search and efficient investigation, as dictated by the seriousness and magnitude of the facts denounced. This did not happen.

199. All the information reported herein indicates that the investigations conducted by the State's judicial branch were marred by manipulation in the gathering of evidence, obstruction of justice and unwarranted delay in the proceedings.

200. The Commission therefore concludes that the Argentine State violated the guarantee of due process within a reasonable time and of due diligence in prosecuting the investigations into the detention and subsequent forced disappearance of Iván Eladio Torres. The violations of articles 1, 8(1) and 25 of the American Convention and of the Inter-American Convention on Forced Disappearance of Persons were consummated when the Argentine State failed to conduct effective internal investigations and proceedings.

a. Right to the truth and the obligation to combat impunity

201. The case law of the inter-American system for the protection of human rights has established that the right to a fair trial should guarantee, within a reasonable time, the right of the alleged victims or their relatives to have adopted all measures necessary to know the truth about the facts and to have those responsible punished.¹⁰⁵ The Inter-American Court has held that the right to the truth is subsumed in the right of the victim or his next of kin to obtain, from the competent organs of the State, a clarification of the facts relating to the violations and the corresponding responsibilities through the investigation and prosecution established in Articles 8 and 25 of the Convention.¹⁰⁶ Specifically in the case of forced disappearance, which is a continuing violation,¹⁰⁷ the Inter-American Court has established the obligation of the State to investigate the facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees.¹⁰⁸

202. The basis for this right is the conviction that knowledge of the truth is one of the most effective means of preventing a recurrence of gross human rights violations and of strengthening the democratic system in a Rule of Law. Further, the State has an obligation to make available to the victims and their next of kin any information it has in its possession and must use every means possible to produce that information.

203. The case law of the inter-American system also holds that in cases of gross human rights violations, the positive obligations inherent in the right to the truth require the adoption of

¹⁰⁵ I/A Court H.R., *Case of the Miguel Castro-Castro Prison*, Judgment of November 25, 2006, paragraph 382.

¹⁰⁶ I/A Court H.R., *Case of Bámaca Velásquez*, Judgment on the Merits, November 25, 2000, paragraph 201; *Case of La Cantuta*, Judgment of November 28, 2006, paragraph 147.

¹⁰⁷ I/A Court H.R., *Case of Bámaca Velásquez*, Judgment of November 25, 2000, paragraph 128.

¹⁰⁸ *Idem*, paragraph 197.

institutional designs that enable this right to materialize in the most suitable, participatory and fullest form possible and that it not encounter the kinds of legal or practical obstacles that make the right to the truth illusory.¹⁰⁹ Thus, in order to satisfy the collective dimension of the right to the truth, the judicial system must strive for as complete a version of the historical truth as possible, which also means that the courts will have to pass judgment on collective behavior and the behavior of any individuals who in one way or another participated in those violations and will have to determine their respective blame. That investigation must be undertaken by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.

204. The right to the truth follows as a basic and necessary consequence for all States parties to the American Convention, since the inability to know the facts in cases of human rights violations means in practice that the system of protection is unable to ensure that those responsible will be identified and ultimately punished.

205. The information supplied by the parties and by the State reveals that it has been six years since Iván Eladio Torres' forced disappearance and as of this writing, his whereabouts and the circumstances surrounding his disappearance are still unknowns and no one has been punished for what happened. Thus, no one has ever been made to answer for the detention and forced disappearance of Iván Eladio Torres in the early morning hours of October 3, 2003; hence the situation of impunity.

206. The Commission observes that the failure to punish the perpetrators of the violations examined herein serves to prolong the suffering that Iván Eladio Torres' next of kin endure as a result of the violation of fundamental rights. It is the duty of the State to provide an adequate judicial response. In the instant case, the statements made by Mrs. María Leontina Millacura Llaipén, mother of Iván Eladio Torres, which are in the court record and in the Commission's case file, tell of the suffering and anguish that the violations committed by agents of the Argentine State caused to the victim and his next of kin. These violations have caused profound moral suffering whose aftereffects continue to this day.

207. Mrs. Millacura Llaipén is still waiting for her son to come back alive.¹¹⁰ Iván Eladio Torres was the breadwinner of the family, especially for his mother, sister and niece. According to information that Mrs. Millacura supplied to the Executive Secretariat of the Commission, for more than a year and a half, she has been "camping" outside the First Sectional Precinct, hoping to obtain some information about her son's whereabouts.

208. So long as the judicial system remains passive and thereby serves to cover up the omission or failure to conduct a proper investigation, crimes go unpunished. The case law of the inter-American system has already established that the failure to punish invites recurrence of the violations being investigated. Prosecution and punishment of the responsible parties serves to prevent a recurrence of similar violations.

209. In conclusion, the Commission considers that the Argentine State has failed to comply with its obligation to provide the victim and his next of kin with an effective judicial remedy to establish the facts, have the responsible parties punished, and obtain reparation for the damages

¹⁰⁹ I/A Court H.R., *Case of La Cantuta*, Judgment of November 29, 2006, paragraph 195.

¹¹⁰ During the working meeting held on March 8, 2006, Mrs. María Leontina Millacura Llaipén informed the staff of the Executive Secretariat that every day she waited for her son to come home; she said that if she needed to leave the house, she always left a note for Iván telling him where she had gone and when she would be back home, just in case he came back while she was out.

caused, all in violation of articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof and Article I(b) of the Inter-American Convention on Forced Disappearance of Persons.

6. Right to recognition as a person before the law, protected under Article 3 of the American Convention.

210. Article 3 of the American Convention provides that every person has a right to recognition as a person before the law. This right is a basic prerequisite for the enjoyment of all basic freedoms, inasmuch as it makes every individual a person before the law. Furthermore the right to juridical personality is protected under a number of international instruments and is a non-derogable right.¹¹¹

211. The forced disappearance perpetrated against Iván Eladio Torres and the situation of extreme vulnerability he was in at the time, were such that he was beyond the protective precinct of the Argentine State's juridical and institutional order. The forced disappearance of persons thus involves a negation of one's own existence as a human being endowed with juridical personality.¹¹²

212. The connection between forced disappearance and violation of the right to recognition of juridical personality is rooted in the fact that the precise objective of forced disappearance is to remove the individual from the protection of the law to which he is entitled. The goal of those who perpetrate forced disappearance is to operate outside the boundaries of the rule of law, covering up all evidence of the crime and endeavoring to elude punishment; their clear and deliberate intention is to eliminate any possibility that the person might file a legal action in exercise of his rights.

213. Forced disappearance is a violation of multiple rights. What it seeks and what it achieves is extinguishment of the victim's juridical personality. The objective is to remove the disappeared person from the real world and world of laws, to conceal his whereabouts and to prevent him –as long as he is alive- from turning to a judge or, for that matter, exercising any right.

214. The right to recognition as a person before the law is the very basis of the notion of a subject of law, which is what determines one's effective existence vis-à-vis society and the State and enables one to be the *titulaire* of rights and obligations, to exercise those rights, and to have a capacity to transact.

215. The Inter-American Court has stated that

Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights. The right to the recognition of juridical personality implies the capacity to be the holder of rights (capacity and exercise) and obligations; the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of such rights and obligations.¹¹³

¹¹¹ See Universal Declaration of Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 16; American Declaration of the Rights and Duties of Man, Article XVII, and the African Charter of Human and Peoples' Rights, Article 5.

¹¹² Declaration on the Protection of all Persons from Forced Disappearance, Article 1.2 of which defines forced disappearance as constituting "a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law ...". United Nations General Assembly resolution 47/133, December 18, 1992.

¹¹³ I/A Court H.R., *Case of the Girls Yean and Bosico vs. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, paragraph 176; and I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000, Series C No. 70, paragraph 179.

216. Recently, the Court recognized that forced disappearances can characterize a specific violation of the recognition of juridical personality, since the person is not only removed from the juridical world, but also denied her/his own existence, leaving her/him in an undetermined juridical situation vis-à-vis society, the State and the international community.¹¹⁴

217. In the instant case, the purpose of those who perpetrated the forced disappearance of Iván Eladio Torres was to act beyond the reach of the law, instill fear, hide any evidence of their crimes and elude punishment. The Commission understands that during the time of his disappearance, the perpetrators attempted to create a legal vacuum, which materialized in the form of the State's refusal to acknowledge that Iván Eladio Torres was in its custody. They thus deliberately prevented the victim from exercising his rights and kept his family in a state of terrible anxiety as to his whereabouts or situation.

218. Based on the arguments of fact and of law stated above, the Commission finds that the Argentine State violated Iván Eladio Torres' right to recognition of juridical personality, protected under Article 3 of the American Convention, in relation to Article 1(1) thereof.

7. Obligation to respect and ensure the protected rights, set forth in Article 1(1) of the American Convention

219. In the instant case, by its violation of the rights established in articles 5, 7, 8 and 25 of the American Convention, the Argentine State has failed to comply with the obligation it undertook in Article 1(1) thereof, which is to "respect the rights and freedoms recognized herein and to ensure to all persons subject to [its] jurisdiction the free and full exercise of those rights and freedoms".

220. The first obligation of any State Party to the American Convention is to respect the protected rights and freedoms of all persons subject to its jurisdiction. As the Inter-American Court has written, "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal laws." It has also held that "in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State."¹¹⁵

221. The second obligation established in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. Here, the States parties have the 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. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention..."¹¹⁶ The violation of a protected right also generates the obligation to adopt the measures necessary to redress the violation.

222. In response to allegations of a forced disappearance, the State has an obligation to investigate the facts and identify and punish the responsible parties. In the case *sub examine* in this report, these fundamental obligations were not observed. The Commission therefore concludes that

¹¹⁴ I/A Court H.R. *Case of Kenneth Ney Anzualdo*, September 22, 2009, paragraph 90.

¹¹⁵ I/A Court H.R., *Case of Velásquez Rodríguez*, paragraphs 170, 172.

¹¹⁶ *Idem*, paragraph 166.

the State has violated Article (1) of the Convention, because it did not ensure the free and full enjoyment of the rights and guarantees of Iván Eladio Torres and his family.

223. Irrespective of the internal distribution of authorities, the Argentine State should have endeavored to get the Province of Chubut to take measures to ensure respect for the rights established in the American Convention and, in particular, due diligence and investigation of the complaints filed by Iván Eladio Torres' next of kin.

224. The purpose of the human rights protection afforded under the American Convention in general –and the articles mentioned here in particular- is more important than any internal division of authority or organization of the units of a federation. So long as they are parts of the State, the units of a federation are equally bound by the provisions of the international treaties ratified by the federal government.

8. Duty to adopt domestic legislative measures, stipulated in Article 2 of the American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons.

225. The States parties to the American Convention have undertaken the obligation to respect and ensure all the rights and freedoms protected under the Convention with respect to all persons subject to their jurisdiction and to adopt the legislative or other measures necessary to give effect to those rights and freedoms.

226. Article 2 of the American Convention provides the following:

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.

227. For its part, Article III of the Inter-American Convention on Forced Disappearance of Persons reads as follows:

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

228. These articles spell out the positive obligation of the States that have ratified the American Convention to strike down any laws that are incompatible with the Convention's object and purpose.

229. The Inter-American Court has held that:

The general duty under Article 2 of the American Convention implies the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.¹¹⁷

¹¹⁷ I/A Court H.R., *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 207.

1. At the provincial level

230. From the records that the Commission has in its possession and from the analysis done thus far in this report, one notes that Law 815 of the Province of Chubut, which regulates police activity in the province and that is still fully in force, authorizes police officers to detain persons who, in their opinion, need to be “identified,” and who are taken to the police stations where they are photographed, their particulars and the activities in which they engage are taken down to check whether those activities are –as the law states- “lawful ways of earning a living.” The Commission notes that this Law is incompatible with the object and purpose of the American Convention, specifically its Article 7.

2. At the federal level

231. In Law 24,556, enacted in Argentina on October 11, 1995, the State approved the Inter-American Convention on Forced Disappearance of Persons. The text of the Convention was affixed to the law. By Law 24820, it was elevated to the rank of constitutional law.

232. The Commission observes that the judicial authorities who have heard this case, especially the Federal Judge of First Instance, prosecuted the inquiry into the facts and the presumed suspects for the crime of forced disappearance of persons, following the provisions of the Inter-American Convention on Forced Disappearance of Persons, even though that offense is still not properly defined as a crime in Argentina’s criminal law.

233. The Commission notes that as of the preparation of this application, the Argentine State has still not materially complied with Article III of the Inter-American Convention on Forced Disappearance of Persons, inasmuch as forced disappearance is not yet classified as a crime under Argentine law and there has been no legislative debate on it thus far.

234. The Commission therefore concludes that the Argentine State failed to comply with its obligation under Article 2 of the Convention, which is to adapt its domestic law to the Convention with respect to articles 3, 4, 5, 7, 8(1), 25 and 1(1) thereof. It has also failed to comply with its obligation under Article III of the Inter-American Convention on Forced Disappearance of Persons, which is to adopt the legislative measures needed to define the forced disappearance of persons as an offense, to impose an appropriate punishment commensurate with its extreme gravity, and to regard the offense as continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

Right to humane treatment under Article 5 of the American Convention with respect to Iván Eladio Torres’ next of kin

235. The Commission finds that the rights protected by Article 5 of the American Convention were violated in the case of the next of kin of the victim Iván Eladio Torres.¹¹⁸ As the Inter-American Court of Human Rights has stated that:

[T]he violation of those relatives' mental and moral integrity is a direct consequence of his forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate.¹¹⁹

¹¹⁸ The next of kin considered victims in this case include his mother, María Leontina Millacura Llaipén and his siblings, Valeria and Marcos Torres.

¹¹⁹ I/A Court H.R., *Case of Blake v. Republic of Guatemala*. Judgment of January 24, 1998, paragraph 114.

236. It has been shown that when the mother of Iván Eladio Torres went to authorities to get information about her son and to file the complaint concerning his disappearance, the personnel at the First Sectional Precinct denied any knowledge of his whereabouts; worse still, they never even took Mrs. Millacura Llaipén's complaint until after the news of the disappearance was reported by the media on October 14, 2003.

237. In effect, the suffering that Iván's next of kin experienced as a result of the unlawful and arbitrary deprivation of the victim's liberty, not knowing his whereabouts, his disappearance and the failure to investigate what happened, and the sense of impotence and anguish they endured for years as the state officials did nothing to investigate the facts and punish those responsible, despite the repeated requests and complaints they filed over 6 and a half year period, are reasons why the next of kin should be regarded as victims of cruel, inhuman and degrading treatment.¹²⁰ Thus far, the only response the family has gotten from the judicial authorities is that "there are reasonable indicia that things may have happened similar to the manner described in the complaint".¹²¹

238. The Court has held that

[t]he frustration of not having the help and collaboration of the State authorities to determine what happened to [the victims] and, if applicable, to punish those responsible, and also to determine their whereabouts and achieve family reunification profoundly affected the physical and mental integrity of their next of kin.¹²²

239. The Court has written in the past that it is reasonable to assume that the afflictions that the victim suffered extend to the closest members of his family, particularly those with whom he was closest.¹²³

240. The Commission also observes that the State's lack of due diligence is self-evident by the fact that when complaints were filed by the victim's next of kin, the State failed to act on those complaints by launching a serious, impartial and effective investigation, within a reasonable period, as the principles of due process require to shed light on the facts and, in particular, identify and punish the material and intellectual authors, in keeping with the State's obligation under Article 1(1) of the Convention, to guarantee the right to humane treatment.

241. Based on the foregoing considerations, the Commission concludes that the Argentine State violated Article 5 of the American Convention, to the detriment of Iván Eladio Torres' next of kin, all in relation to Article 1(1) of that instrument.

VIII. REPARATIONS AND COSTS

¹²⁰ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, paragraph 101; See also, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 118.

¹²¹ Copy of Appeals Court ruling 42/2008, of February 28, 2008.

¹²² I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, paragraph 114.

¹²³ I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 160; I/A Court H.R., *Case of the "Juvenile Reeducation Institute"* Judgment of September 2, 2004. Series C No. 112, paragraph 191; I/A Court H.R., *Case of the 19 Tradesmen*". Judgment of July 5, 2004. Series C No. 109, paragraph 249; I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paragraph 162; I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 98.

242. The *jurisprudence constante* of the Inter-American Court is that “it is a principle of international law that any violation of an international obligation that has caused damage creates a new obligation, which is to adequately redress the wrong done.”¹²⁴ Given the facts alleged in the present application, and in application of that jurisprudence, the Commission is submitting to the Court its claims as to the reparations and costs that the Argentinean State must pay as a consequence of its responsibility for the human rights violations committed against Iván Eladio Torres and his next of kin.

243. 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 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 and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and Article 25 and related provisions of the Rules of Court. However, in the event the injured party does not exercise this right, the Court is asked to grant the Inter-American Commission a procedural opportunity to quantify the pertinent claims.

A. Obligation to make reparations

244. One of the essential functions of justice is to redress the harm caused to the victim. That function can materialize in the form of rectification or restitution, and not simply through compensation, which does nothing to restore the moral balance or return that which was taken.

245. 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.

246. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power affords broad guarantees for those who suffer harm, including economic loss, physical or mental injury, or “substantial impairment of their fundamental rights” through acts or omissions that are in violation of criminal law, including law proscribing criminal abuse of power. The victims or the next of kin have the right to seek redress and to be informed of that right.¹²⁵

247. As this Court has previously held,

Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation and putting an end to the consequences of the violation.¹²⁶

¹²⁴ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 230; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 85; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 138.

¹²⁵ U.N. A/RES/40/34 of November 29, 1985, paragraphs 1, 4 and 5.

¹²⁶ I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 86; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 52; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 139.

248. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the 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.

249. Where full restitution is not possible, as is true 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.¹²⁷

250. 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 by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.¹²⁸ "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."¹²⁹

B. Measures of reparations

251. Some writers reason that in situations such as the case *sub examine*, the State must fulfill the following obligations to remedy the situation of the victim and/or his next of kin: "the obligation to investigate and disclose the facts that can be reliably established (truth); the obligation to prosecute and punish those responsible (justice); the obligation to make full reparations for the pecuniary and non-pecuniary damages caused (reparation) and the obligation to remove from the security forces anyone known to have committed, ordered or tolerated these abuses (creation of security forces worthy of a democratic state). These obligations are neither alternatives to each other nor optional; a responsible State must do everything possible to fulfill each and every one in good faith."¹³⁰

252. The United Nations Special Rapporteur on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law has divided the forms of reparation into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.¹³¹ In the opinion of the United Nations Special Rapporteur on the Question of the Impunity of Perpetrators of Human Rights Violations, these measures include: cessation of

¹²⁷ I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, para. 53; I/A Court H.R., *Case of De la Cruz Flores.* Judgment of November 18, 2004. Series C No. 115, para. 140.

¹²⁸ I/A Court H.R., *Case of Lori Berenson Mejía.* Judgment of November 25, 2004. Series C No. 119, para. 231; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, para. 53.

¹²⁹ 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 XXI century," San José, Costa Rica, November 1999.

¹³⁰ JUAN E. MÉNDEZ, *EL DERECHO A LA VERDAD FRENTE A LAS GRAVES VIOLACIONES A LOS DERECHOS HUMANOS*, article published in *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales*, CELS, 1997, p. 517.

¹³¹ Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, document prepared by Dr. Theo Van Boven pursuant to Sub-Commission decision 1995/117. E/CN.4/Sub.2/1996/17.

continuing violations; verification of the facts; full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely connected with the victim; an apology, including public acknowledgment of the facts and acceptance of responsibility; judicial or administrative sanctions against those responsible for the violations; preventing the recurrence of violations, etc.

253. For its part, the Court has written that reparations are measures aimed at removing the effects of the violations.¹³² These measures include the different ways in which a State may own up to its international responsibility, which under international law includes measures of restitution, compensation, rehabilitation, and satisfaction, and measures of non-repetition.¹³³

254. Accordingly, 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.¹³⁴

255. Given the foregoing, the Inter-American Commission asks that the Court order measures of comprehensive reparations that serve to send a message condemning the impunity that attends the vast majority of human rights violations in the member states of the Organization of American States. This will mean that judicial and administrative mechanisms will have to be established and strengthened to enable victims to obtain redress through *sua sponte* procedures that are expeditious, fair, low-cost and accessible.

256. Based on the evidence presented in this application and in light of the criteria the Court has established in its case law, the Inter-American Commission presents its conclusions and the relief sought in the form of the measures of reparation called for in the case of Iván Eladio Torres and his next of kin, namely his mother María Millacura Llaipén, his sister Valeria Torres and his brother Marcos Torres.

1. **Measures of cessation, satisfaction and guarantees of non-repetition**

257. 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.”¹³⁵ Satisfaction involves measures of three kinds, generally taken cumulatively: apologies or any other

¹³² I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 160, para. 202; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 144..

¹³³ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law*, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of January 22, 1999. Series C. No. 48, para. 31; *Suárez Rosero Case, Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of January 20, 1999. Series C No. 44, para. 41.

¹³⁴ 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 1995/117*, May 24, 1996, para. 7.

¹³⁵ *Brownlie, State Responsibility Part 1*. Clarendon Press, Oxford, 1983, p. 208.

gesture acknowledging authorship; prosecution and punishment of the individuals involved, and measures taken to prevent a repetition of the wrong done.¹³⁶

258. On November 29, 1985, the United Nations General Assembly approved by consensus the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹³⁷ which holds that victims “are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered.” Accordingly, the needs of the victims must be addressed by allowing “the views and concerns of victims to be presented and considered at appropriate states of the proceedings where they personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”

259. In the European system, by contrast, the European Convention on the Compensation of Victims of Violent Crimes, drafted in 1983, essentially concerns itself with the situation of victims who have sustained bodily injury or impairment of health directly attributable to an intentional crime of violence and the dependents of persons who have died as a result of such crimes. The Convention also makes reference to the duty to protect the victims and to grant them certain rights to participate in the criminal proceedings.¹³⁸

260. The IACHR will explain its position regarding the measures of cessation, satisfaction and guarantees of non-repetition required in the instant case, although it may later elaborate upon its arguments on this issue:

261. One fundamental element that follows from a finding of state responsibility for human rights violations is the requirement that all violative conduct cease, as well as guarantee that similar violations will not recur.¹³⁹

262. The *jurisprudence constante* of the Court is that individual identification of those responsible is a natural consequence of the obligations spelled out in the Convention and a prerequisite for eliminating generalized impunity.¹⁴⁰ The Court has also held that impunity is a breach of the State’s duty that is harmful to the victim, his next of kin and society as a whole and fosters chronic recidivism of the human rights violations concerned. In the words of the Court:

¹³⁶ *Idem.*

¹³⁷ A/RES/40/34, Access to justice and fair treatment. “4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.”

¹³⁸ European Convention of November 24, 1983, on the Compensation of Victims of Violent Crimes. The Council of Europe has also issued provisions and recommendations on the rights of crime victims.

¹³⁹ I/A Court H.R., *Case of Castillo Páez. Reparations (Art. 63(1) of the American Convention on Human Rights)*. Judgment of November 27, 1998. Series C No. 43, para. 52.

¹⁴⁰ The Court has defined impunity as “the overall failure to investigate, pursue, capture, prosecute and convict those responsible for the violations of the rights protected under the American Convention.” See in this regard, I/A Court H.R., *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 94; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 76.

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible [and] to impose the appropriate punishment.¹⁴¹

263. In this regard, the Commission considers that investigation is not simply a measure of satisfaction; it is also a measure of cessation, for until such time as the State has fulfilled its obligation to investigate, prosecute and duly punish human rights violations committed during the present case, it is committing a continuing violation of the right protected under Article 25 and the obligation undertaken in Article 1 of the American Convention.

264. Time and time again the Court has held that every individual and society as a whole have the right to be informed of what happened in cases of human rights violations.¹⁴² Similarly, the United Nations Commission on Human Rights has recognized that, for 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 urged states to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations could be investigated and made public and to encourage victims to participate in such a process.¹⁴³

265. The Court has held the following:

[T]he State is required to remove all obstacles –both factual and legal- contributing to impunity...; grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.¹⁴⁴

266. The essential reparations in this case are a thorough, serious and prompt investigation of the facts to establish and punish the intellectual and material responsibility of all those persons who participated in the events connected with Iván Eladio Torres' forced disappearance. The victim's next of kin must have full access to and standing in all phases and forums of the inquiries, in accordance with domestic law and the provisions of the American Convention. Likewise, in furtherance of its obligation, the State will have to ensure that the decision taken by the domestic courts is effectively enforced. The result of the proceeding must be publicly disclosed, so that Argentine society may know the truth.¹⁴⁵

¹⁴¹ I/A Court H.R., *Case of Velásquez Rodríguez, Merits*. Judgment of July 29, 1988, Series C No. 4, para. 174; I/A Court H.R., *Case of Castillo Páez*. Judgment of November 3, 1997. Series C No. 34, para. 90.

¹⁴² I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 347; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 139; and I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 245.

¹⁴³ E/CN.4/RES/2001/70.

¹⁴⁴ I/A Court H.R., *Case of La Cantuta. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 226; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 134. See also I/A Court H.R., *Case of Almonacid Arellano. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 156.

¹⁴⁵ I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 107; I/A Court H.R. *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 175; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 128; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 98.

267. Furthermore, the State must use all means necessary to investigate, identify and report the whereabouts of Iván Eladio Torres or his remains, as the case may be.

268. The IACHR also considers that one of the reparations that the Argentine State must make is to stage a public event in which it acknowledges its international responsibility for the facts denounced in this case and in which it clears the good name of the victim and his next of kin, all in consultation with the next of kin and intended to restore and preserve the historical memory.

269. Finally, the State must adopt the legislative measures necessary to criminalize forced disappearance of persons in Argentina and to ensure that Law 815 “The Organic Police Law” of Chubut Province conforms to the standards established in the American Convention.

2. Measures of compensation

270. The Court has established the basic criteria to be followed in setting the amount that will constitute adequate and effective economic compensation to redress the damages sustained as a result of the violations of human rights. The Court has also held that the indemnity is purely compensatory in nature, and will be granted to the extent and in the amount sufficient to compensate for the pecuniary and non-pecuniary damages caused.¹⁴⁶

C. The *titulaires* of the right to receive reparations

271. 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.

272. Given the nature of the present case, the beneficiaries of any reparations that the Court may order as a consequence of the human rights violations committed by the Argentine State would be: Iván Eladio Torres and his next of kin.

273. As is its practice, when it approved Report 114/09 the Commission made generic reference to Iván Eladio Torres’ next of kin. Apart from the generic reference to the next of kin, the Commission also named the following persons as victims: Iván Eladio Torres’ mother, María Millacura Llaipén; his sister, Fabiola Valeria Torres; his brother, Marcos Torres, and his niece, Evelyn Paola Caba. Following approval of the merits report and in keeping with the practice at that time, the petitioners informed the Commission of the names of other family members, among them the following: his brother-in-law, Juan Pablo Caba, and two more nieces, Ivana Valeria Torres and Romina Marcela Torres. The Commission is therefore adding their names in the present application.

D. Costs and expenses

274. The *jurisprudence constante* of the Court is 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

¹⁴⁶ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 204; I/A Court H.R., *Case of Garrido and Baigorria.* Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, para. 41.

financial nature that must be compensated.¹⁴⁷ The Court has also held that the costs also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.

275. In the *cas d'espèce*, the Inter-American Commission is requesting that once the Court has heard from the representatives of the injured party, it order the Argentine State to pay the duly proven costs and expenses, taking into consideration the special characteristics of the present case.

IX. Conclusions

276. The forced disappearance of Iván Eladio Torres, the subsequent lack of due diligence in prosecuting a prompt and thorough investigation into the facts and punishing those responsible, and the denial of justice and adequate redress to the victim's next of kin are violations of the human rights of Iván Eladio Torres and his next of kin.

277. Accordingly, the Commission concludes that the Argentine State violated, to the detriment of Iván Eladio Torres, the rights to juridical personality, to personal liberty, to humane treatment, to life, to judicial guarantees and to judicial protection, recognized in articles 7, 5, 4, 3, 8(1) and 25, respectively, of the American Convention, in relation to Article 1(1) thereof. The Commission also finds that the State is responsible for violation of articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the detriment of Iván Eladio Torres.

278. The Commission concludes further that the State is responsible for violation of the rights to humane treatment, to judicial guarantees and to judicial protection, recognized in articles 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof and to the detriment of the victim's next of kin.

279. Finally, the IACHR concludes that with respect to articles 3, 4, 5, 7 8(1), 25 and 1(1) of the Convention, the Argentine State failed to fulfill the obligation it undertook in Article 2 of the Convention, which is to adopt any adjustments necessary so that its domestic laws give effect to the rights recognized therein.

X. PETITION

280. Based on the arguments of fact and of law set forth above, the Inter-American Commission on Human Rights requests the Court to adjudge and declare that:

- The Argentine State is responsible for violation of the rights to juridical personality, personal liberty, humane treatment, life, judicial guarantees and judicial protection, recognized in articles 7, 5, 4, 3, 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Iván Eladio Torres.
- The State is also responsible for violation of articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Iván Eladio Torres.

¹⁴⁷ I/A Court H.R., *Case of Carpio Nicolle et al. Case*, Judgment of November 22, 2004. Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 115; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 177.

- Further, the State is responsible for violation of the rights to humane treatment, to judicial guarantees and to judicial protection, recognized in articles 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the victim's next of kin.
- Finally, the IACHR concludes that the Argentine State failed to comply with its obligation under Article 2 of the Convention, which is to adapt its domestic laws to conform to the Convention, specifically its articles 3, 4, 5, 7, 8(1), 25 and 1(1).

281. Therefore, the Inter-American Commission is asking the Court to order the State to:

- Conduct a thorough, impartial and effective investigation into the fate or whereabouts of Iván Eladio Torres. Should it find that the victim is no longer living, adopt the measures necessary to turn over his remains to the next of kin.
- Conduct a thorough, impartial, effective and prompt investigation of the facts to determine and punish the intellectual and material responsibility of all persons who participated in the events related to Iván Eladio Torres' arbitrary detention, torture and forced disappearance.
- Conduct a thorough, impartial, effective and prompt investigation of those persons affiliated with the various state agencies and who were involved in the investigations and proceedings conducted in connection with the present case, with a view to establishing their responsibility (administrative, disciplinary, criminal or otherwise) for the failings of the investigation and prosecution of the facts, as a result of which the violations went unpunished.
- Stage a public event at which it acknowledges its responsibility for the facts of this case and clears the name of the victim and his next of kin, and officially name a square or street in Comodoro Rivadavia in honor of Iván Eladio Torres, in order to preserve the memory of the past.
- Adopt the legislative measures necessary to bring Law 815 "The Organic Police Law" of the province of Chubut in line with the standards established in the American Convention.
- Adopt the legislative measures necessary to criminalize the forced disappearance of persons in Argentina.
- Make full reparations to Iván Eladio Torres' next of kin, to include not only compensation for pecuniary and non-pecuniary damages and the costs and expenses of the litigation at both the domestic and international levels, but also certain acts of symbolic importance that serve to guarantee that the crimes committed in the present case will never again occur.

XI. EVIDENTIARY SUPPORTS

I. A. Documentary evidence

282. The following is a list of the documentary evidence available at this time:

APPENDIX 1: IACHR, Merits Report No. 114/09, Case 12,533, Iván Eladio Torres *et al.*, October 28, 2009.

APPENDIX 2: IACHR, Admissibility Report No. 69/05, Case 12,533, Iván Eladio Torres, October 13, 2005.

APPENDIX 3: Record of case 12,533 with the IACHR.

ANNEX 1: *Centro de Estudios Legales y Sociales (CELS)* and Human Rights Watch, *"Inseguridad Policial. Violencia de las fuerzas de seguridad en la Argentina."* Editorial Eudeba, 1998.

ANNEX 2: Report on the Disappearance of Iván Eladio Torres, dated June 29, 2006, prepared by the Centro de Estudios Legales y Sociales (CELS).

ANNEX 3: Court record in the case of "Millacura Llaipén, María Leontina Millacura Llaipén/Disappearance Complaint."

ANNEX 4: Law 815 "Organic Police Law" of Chubut province.

ANNEX 5: Internal report dated February 2004 and prepared by the Human Rights Secretariat of the Ministry of Justice, Security and Human Rights of the Argentine State.

ANNEX 6: Press clippings.

ANNEX 7: Copy of the log for the Radio Dispatch Center for September 25 and 26, 2003.

ANNEX 8: Note from the State SG 334, dated November 7, 2005 and addressed to the Inter-American Commission.

ANNEX 9: Letter from David Hayes, dated January 10, 2005.

ANNEX 10: Copy of the First Sectional Precinct's daily log for October 3, 2003.

ANNEX 11: Request seeking precautionary measures, dated January 10, 2005.

ANNEX 12: Petition filed by Mrs. Millacura Llaipén with the IACHR on November 14, 2003.

ANNEX 13: Copy of the petition filed by Valeria Torres on October 27, 2003.

ANNEX 14: Copy of interlocutory decree 516/07 of October 15, 2007.

ANNEX 15: Copy of ruling 42/2008 of February 28, 2008.

ANNEX 16: Reports and application of the Inter-American Commission:

- Report No. 53/01, Case 11,565. *Ana, Beatriz and Celia González Pérez*. Mexico, April 4, 2001, para. 23.
- Report No. 035/96, Case 10832, *Luis Lizardo Cabrera*, Dominican Republic, April 7, 1998, para. 66.
- Annual Report 1997, Report No. 55/97, Case 11,137 (*Juan Carlos Abella et al.*), Argentina, para. 412. On the same topic, see also: IACHR, Annual Report 1997, Report No. 52/97, Case 11,218 (*Arges Sequeira Mangas*), Nicaragua, paragraphs 96 and 97.
- Report 40/00, Case 12,588 and others, *Isabela Velásquez et al.* Argentina, April 13, 2000, para. 64.
- Application that the IACHR filed with the I/A Court H.R. in the case of *RAINER IBSEN*

CÁRDENAS and JOSÉ LUÍS IBSEN PEÑA v. BOLIVIA, May 12, 2009. Available at <http://www.iachr.org/demandas/12.529%20Rainer%20Ibsen%20Cardenas%20y%20Jose%20Luis%20Ibsen%20Pe%C3%B1a%20Bolivia%2012%20mayo%202009%20ENG.pdf>.

ANNEX 17: Power of attorney.

ANNEX 18: *Curriculum vitae* of the expert witnesses offered by the Commission.

283. The Commission should advise the Court that the copies of some of the documents attached as annexes to the application, certain records of judicial and administrative proceedings conducted at the domestic level are the best it has and has been able to obtain thus far. Some of the files are incomplete or illegible.

284. The Commission is therefore petitioning the Court to order the Argentine State to supply certified copies of all documents related to the domestic proceedings conducted in connection with the facts of this case, and authenticated copies of all applicable laws and regulations.

B. Testimony of expert witnesses

285. The Inter-American Commission is also offering the following expert witnesses:

i. Expert witness to be determined. This expert witness will give testimony concerning police abuses committed against disadvantaged youth at the federal and provincial levels, and the failure to investigate the abuses and punish those responsible for those violations and the lack of access to justice in these matters. The Commission is of the view that this case raises substantive issues regarding abuses committed by state police in Argentina, which have obstructed justice and thereby allowed these abuses to go unpunished.

ii. Expert witness to be determined. This expert witness will give testimony about the role that the Argentine federal authorities play with respect to the provinces and the influence or lack of influence that federal authorities have in the provinces. The Commission is of the view that this case raises substantive issues regarding the interrelationship between the federal government and the Argentine provinces and its effects, which have been an obstacle in the pursuit of justice and have enabled impunity.

XII. INFORMATION ON THE REPRESENTATIVES

286. In compliance with the Court's Rules of Procedure, the Inter-American Commission submits the following information:

287. María Leontina Millacura Llaipén granted power of attorney to lawyers Verónica Heredia and Silvia de los Santos to represent her and her son Iván Eladio Torres in the proceedings before the organs of the Inter-American System. Valeria Torres and Messrs. Juan Pablo Caba and Marcos Alejandro Torres Millacura granted power of attorney to the same two lawyers to serve as their and their daughters' representatives.

288. The representatives of the victims have given their address as: [REDACTED]

Washington, D.C., April 18, 2010