

OEA/Ser.L/V/II.160  
Doc. 85  
10 December 2016  
Original: Spanish

**REPORT No. 77/16**  
**CASE 12.602**

WALTER MUNÁRRIZ ESCOBAR  
REPORT ON THE MERITS  
PERU

Approved by the Commission at its session No. 2072 held on December 10, 2016  
160 Regular Period of Sessions

**Cite as:** IACHR, Report No. 77/16, Case 12.602. Walter Munárriz Escobar. Merits Report. Perú.  
10 December, 2016.



**REPORT No. XX/16**  
**CASE 12.602**  
**REPORT ON THE MERITS**  
**WALTER MUNÁRRIZ ESCOBAR**  
**PERÚ**  
**DECEMBER 10, 2016**

**INDEX**

I.	SUMMARY .....	2
II.	PROCEEDINGS BEFORE THE COMMISSION .....	2
III.	POSITIONS OF THE PARTIES .....	3
A.	Position of the petitioners .....	3
B.	Position of the State .....	5
IV.	PROVEN FACTS.....	6
A.	Detention and disappearance of Walter Munárriz Escobar .....	7
B.	Internal proceedings related to the disappearance of Walter Munárriz Escobar .....	9
1.	Criminal investigation .....	9
2.	Disciplinary process .....	14
3.	Investigation of the Office of the People’s Defender .....	15
V.	LEGAL ANALYSIS.....	17
A.	Rights to recognition as a person before the law, to personal liberty, to humane treatment, and to life (Articles 3.1, 7.1, 7.2, 7.3, 7.4, 7.5, 5.1, 5.2, and 4.1, considered in conjunction with Article 1.1 of the American Convention); obligation referred to in Article 1.a) of the Inter-American Convention on the Forced Disappearance of Persons, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.17	
1.	General considerations on the forced disappearance of persons .....	19
2.	Analysis of the present case.....	21
B.	Right to a fair trial and to judicial protection (Articles 8.1 and 25.1 of the American Convention), considered in relation to the obligation to respect human rights (Article 1.1 of that instrument) and the obligation to adopt provisions within their legal jurisdiction, Article 1.b of the Inter-American Convention on the Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.....	25
1.	General considerations on the duty to investigate in cases of forced disappearance .....	26
2.	Analysis of whether the State complied with its obligation to investigate with due diligence and in a reasonable period of time.....	29
C.	Obligation to adopt provisions of domestic law related to the classification of the crime of forced disappearance of persons (Article 2 of the American Convention and III of the Inter-American Convention on the Forced Disappearance of Persons) .....	31
D.	Right to humane treatment of members of the families of victims (Articles 5.1, in conjunction with 1.1 of the American Convention on Human Rights.....	32
VI.	CONCLUSIONS.....	33
VII.	RECOMMENDATIONS.....	33

**REPORT No. 77/16**  
**CASE 12.602**  
REPORT ON THE MERITS  
WALTER MUNÁRRIZ ESCOBAR  
PERÚ<sup>1</sup>  
DECEMBER 10,2016

## **I. SUMMARY**

1. On June 28, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission" or the "IACHR") received a petition from the Human Rights Committee (*Comisión de Derechos Humanos*) COMISEDH (hereinafter "the petitioners") alleging the responsibility of the Republic of Peru (hereinafter "the State," "the Peruvian State" or "Peru") for the forced disappearance on March 20, 1999 of Walter Munárriz Escobar.

2. The petitioners alleged that Walter Munárriz Escobar disappeared on March 20, 1999, after having been detained at the Lircay police station. They report that more than 17 years later, the Peruvian State has still not concluded investigations to establish the fate or the whereabouts of the victim or the persons responsible for his disappearance.

3. The State, in turn, asserted that the detention of Walter Munárriz was not arbitrary and that he was only in the Lircay police station for a short time, and left on that same day because no formal charges were brought against him. It maintained that two witnesses saw him walking along the streets in the neighborhood of the police station, with visible signs of intoxication. The State further maintained that the investigation and criminal proceedings initiated on the disappearance of Walter Munárriz Escobar proceeded appropriately, and that the defendants were acquitted on the grounds of insufficient evidence.

4. After analyzing the position of the parties and the evidence contained in the file, the Inter-American Commission concluded that the Peruvian State is responsible for violation of the rights to recognition of juridical personality, to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, enshrined in Articles 3, 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, and 25.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), considered in conjunction with the obligations established in Articles 1.1 and 2 of that instrument, for the forced disappearance of Walter Munárriz Escobar. In addition, the Commission concluded that the State violated the rights to humane treatment, fair trial and judicial protection established in Articles 5.1, 8.1, and 25.1 of the American Convention, considered in conjunction with the obligations established in Article 1.1 and 2 of that instrument, to the detriment of the next-of-kin of Walter Munárriz Escobar. Finally, the Commission concluded that the Peruvian State is responsible for violation of the obligations established in Articles 1.a, 1.b 8, and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter the "CIDFP") and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "CIPST"). Consequently, the Commission set forth the following recommendations.

## **II. PROCEEDINGS BEFORE THE COMMISSION**

5. On June 28, 2005, the Commission received the petition presented by COMISEDH, the processing of which prior to the decision on admissibility is explained in detail in Admissibility Report No. 10/07.<sup>2</sup> In that report, the IACHR declared the petition admissible and indicated that the alleged facts could characterize a violation of the rights established in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, considered in relation to the obligations established in Articles 1.1 and 2 of that instrument. It further declared the petition

---

<sup>1</sup> According to Article 17(2) of the Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, a Peruvian national, did not participate in the discussion and approval of this report.

<sup>2</sup> IACHR, Report No.10/07, Case 12602, Admissibility, Walter Munárriz Escobar, February 28, 2007, paras. 5 to 10. <http://www.cidh.oas.org/annualrep/2007sp/Peru735.05sp.htm>

admissible for alleged noncompliance with Articles I and III of the Inter-American Convention on the Forced Disappearance of Persons.

6. On April 4, 2007, the Commission notified both parties of the adoption of the admissibility report, and placed itself at their disposal for the purpose of arriving at a friendly settlement of the matter. In the same communication, the IACHR granted the petitioners two months to present their additional comments on the merits. The petitioners responded in a communication dated April 16, 2007, informing the Commission of their interest in initiating a friendly settlement procedure. That communication was submitted to the State, with the request to submit, within one month, its decision on the possibility of initiating a friendly settlement process. On August 9, 2007, the State submitted a brief giving its comments, but without clearly indicating its position with regard to the possibility of initiating a friendly settlement procedure. On September 17 and October 1, 2007, the State submitted further comments. These, together with the communication of August 9, 2007, were transmitted to the petitioners who, in a communication dated October 23, 2007, submitted comments. In a communication dated December 12, 2007, the Commission considered its attempt to seek a friendly settlement agreement as concluded, and requested the petitioners to submit their comments on the merits within two months; they were presented on June 23, 2009. The IACHR forwarded these comments on the merits to the State on August 5, 2009, and requested it to provide additional comments on the merits within two months. The State responded on October 2 of that year.

7. Subsequently, the Commission received communications from the petitioners on April 6, 2010, April 4, 2011, and February 17, 2016. It also received communications from the State on September 30 and December 5, 2011. The relevant parts of those communications have been duly forwarded to the parties.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioners

8. The petitioners stated that Walter Munárriz Escobar, 19 years old, was a student at the Mining Engineering School at the University of Huancavelica. They reported that early in the morning of March 20, 1999, Walter Munárriz Escobar went to “Los Manolos” Hotel looking for a friend, and mistakenly entered the room of another person who turned out to be the wife of an officer of the Peruvian National Police (PNP). The petitioners added that Walter Munárriz Escobar, upon realizing his error, apologized and proceeded to leave. However, the hotel guest, thinking that he must be a thief, notified the owner of the hotel and the police. They stated that that same night, Walter Munárriz Escobar was arrested by a sub-officer of the Peruvian National Police [PNP] and taken to the Lircay police station; the owner of the hotel also arrived at the station and, since she recognized him, she decided not to file a complaint against him. The petitioners asserted that when the hotel owner left the police station, Walter Munárriz Escobar was still there, and has been a disappeared person ever since.

9. The petitioners reported that when Walter Munárriz Escobar’s mother, Mrs. Gladys Escobar Candiotti, went to the police station to inquire into his whereabouts, the police officers told her that he had already left the station heading for home, and denied any knowledge of his whereabouts. They further recounted that when she did not find her son, she returned to the police station and asked to check the facilities, where she found two persons detained (Raúl Donayres Huamán and Marcos Leónidas Sierra Tueros), but not her son.

10. The petitioners indicated that the family of Walter Munárriz reported his disappearance to the appropriate authorities and sought various judicial and administrative remedies. They reported that on March 21, 1999, his mother went to the Lircay Provincial Prosecutor’s Office to file a complaint on the disappearance of her son; she indicated that she presumed that the police who were on duty on March 20, 1999 were responsible for the disappearance. The petitioners stated that the Prosecutor refused to receive the complaint and told her to come back in 60 days. According to the petitioners, Mrs. Gladys Escobar Candiotti returned three times to that Prosecutor’s Office, where she met with the same refusal each time. The petitioners added that, on the following day, Mrs. Escobar Candiotti filed a report on the disappearance of her son in the Lircay police station.

11. The petitioners reported that on March 23 and 24 of that year, complaints regarding the disappearance of Walter Munárriz were filed with the Office of the People's Defender in Huancavelica. They added that the following month, his mother submitted pleadings to the Minister of the Interior and the Chairman of the Human Rights Committee of the National Congress, requesting support in determining the whereabouts of her son.

12. The petitioners stated that on April 22 of that year, the Angaraes Joint Provincial Prosecutor's Office formally charged PNP Captain Roberto Gastiaturú Nakada, PNP Second Lieutenant Claudio Gutiérrez Velásquez, and PNP noncommissioned officer Adolfo Ángeles Ramos with committing a crime against humanity in the form of the aggravated disappearance of Walter Munárriz Escobar. They added that on June 1, 2000, the Huancavelica Joint Senior Prosecutor's Office indicted the three officers indicated, plus two others, Gunther Cuaresma Ramos and Percy Salvatierra Laura, and asked for a prison term of 15 years, professional disqualification, and payment of ten thousand new soles. They reported that on February 15, 2001, the Huancavelica Joint Superior Court convicted Roberto Eugenio Gastiaturú Nakada and Adolfo Ángeles Ramos as the perpetrators of the crime against humanity in the form of forced disappearance of Walter Munárriz Escobar, and sentenced them to 18 years in prison and professional disqualification; it acquitted the other police officers.

13. They further stated that the First Supreme Prosecutor's Office requested that the decision be set aside only in the matter of the acquittal of the three police officers. They further reported that on December 13, 2001, the Supreme Criminal Chamber issued a decision pointing out certain procedural irregularities in the oral proceedings, quashing the judgment of February 15, 2001, and remanding the case for a new oral trial. The petitioners reported that on May 25, 2004, the Huancavelica Joint Superior Court acquitted Roberto Eugenio Gastiaturú Nakada, Claudio Gutiérrez Velásquez, Adolfo Ángeles Ramos, Gunther Cuaresma Ramos, and Percy Salvatierra Laura. They added that on October 20 of that year, the Court ruled that said judgment could not be overturned.

14. With regard to the investigations conducted by the Office of the People's Defender, the petitioners reported that it conducted various interviews, and reviewed the police blotter and control register of the Ccochaccasa police station and of the Provincial Angaraes-Lircay Police Headquarters. The petitioners further stated that the Defender's Office reached the following conclusions: i) there is evidence of the disappearance of citizen Walter Munárriz Escobar at the hands of police personnel working in the Provincial Lircay police station [...]; ii) the detention was arbitrary, no complaint was filed, and it was not duly registered; iii) the Provincial Prosecutor did not conduct an impartial and objective investigation into the event; iv) there was no critical evidence gathered that could have been used to guide proceedings; and, v) Walter Munárriz "was subjected to physical and verbal abuse by police personnel."

15. The petitioners alleged that the lack of due diligence in the investigations prevented access to justice, with the result that a situation of impunity has prevailed to date, in violation of the **rights to a fair trial and to judicial protection**. They further indicated that the judicial proceedings undertaken by the family of Walter Munárriz have been rife with procedural hurdles from the start, since the prosecutor refused initially to accept the complaint of the mother of Walter Munárriz, and subsequently acted in a biased manner. They also pointed out that a person detained at the Lircay police station on the same day as Walter Munárriz Escobar was coerced into declaring that nothing unusual had occurred on the day of the events. They added that 17 years later, the Peruvian State has still neither determined the persons responsible for the disappearance of Walter Munárriz Escobar, nor taken effective steps to determine his whereabouts.

16. As regards the **right to life and humane treatment**, the petitioners contended that the State is responsible for the disappearance of Walter Munárriz, who was last seen alive in the Lircay police station. The petitioners further alleged that during the time he was detained at that police station, he was the victim of physical aggression by Peruvian State agents.

17. With respect to the **right to personal liberty**, the petitioners claim that Walter Munárriz Escobar was detained arbitrarily and illegally by agents of the Peruvian State, as proven by the Office of the People's Defender.

18. With regard to the **rights of the family to truth and to personal integrity**, the petitioners allege that over 17 years have gone by and the whereabouts of Walter Munárriz Escobar is still unknown, a situation that has inflicted severe suffering on the members of his family, who are still uncertain if he is alive or dead.

## **B. Position of the State**

19. The State reported that there is a National Human Rights Plan that seeks to ensure that these rights are effective throughout the public structure. It asserted that it is the intent of the State to investigate crimes against human rights, and especially those that are permanent, such as forced disappearance. It added that since the Inter-American Court of Human Rights issued its judgment in the Barrios Altos case, the obligation to investigate has been carried out more effectively than it had in the past. It pointed out that said judgment refers to the fact that the obligation to investigate is an obligation of means and behavior and that the fact that the Peruvian State was unable to produce a satisfactory result, owing to the complexity of the matter in the case in point, does not mean that it failed to comply with said obligation.

20. In its early briefs, the Peruvian State declared that "in the present case, there is reasonable evidence that what is involved is a case of forced disappearance, irrespective of the persons who may be implicated in the commission of this crime. What can be presumed is that it was committed by State agents." After the admissibility report was adopted, and as described further on, the State indicated that personnel of the National Peruvian Police implicated in the intervention involving the disappeared person, Walter Munárriz Escobar, had acted negligently by not applying Police Operating Procedure, but it maintained that there was no evidence proving the responsibility of the State in the disappearance of Walter Munárriz Escobar.

21. As regards the **right to a fair trial and to judicial protection**, the State held that the criminal process pursued into the disappearance of Walter Munárriz Escobar proceeded appropriately, leading to the acquittal of the defendants due to insufficient evidence, which does not rule out the possibility that at a given point in time, evidence may be presented to support the reopening of criminal proceedings. The State added that it availed itself of the remedies provided in the domestic jurisdiction in a timely manner, in an effort to determine the identity of the persons responsible for the disappearance of the alleged victim, and that the Supreme Court, based on the principles of presumption of innocence, *indubio pro reo*, and sufficient evidence, upheld the acquittal of the defendants. The State emphasized that the judicial proceeding was protected by the constitutional principle of *res judicata*.

22. It further maintained that the following rights were respected: the right to free access to a court of law; to conduct probatory and defense activities in adversarial proceedings on an equal footing; to obtain a decision based on the law; to have access to regulated means of judicial redress; and to observance of the principle of legality.

23. The State observed that "it can be noted that the personnel of the National Peruvian Police (PNP) who were involved in the intervention with the disappeared person, Walter Munárriz Escobar [...] had acted negligently by not following the Police Operating Procedure, a reason for the investigation involving Walter Munárriz Escobar, as they did not issue any kind of document as a result of that intervention, to establish the responsibility and/or innocence of the detainee that would uphold his release and/or detention. They proceeded to grant him his freedom merely on the grounds of the failure of the injured parties to press charges at the time of the events." Thus, the State reported that the police officers involved were subject to disciplinary sanctions of 6 and 20 days of simple arrest.

24. In subsequent filings regarding the **right to life, to personal liberty, and to humane treatment**, the State maintained that Walter Munárriz Escobar was not taken to the Lircay police station in an illegal or arbitrary manner, but at the request of the affected persons. It pointed out that once at the police station, he was not taken to a room or to a remote place where he could not be seen, so that he could be hidden and they

could torture or kill him. On the contrary, it indicated that the statement given by the owner of "Los Manolos" Hotel recounts that she saw Walter Munárriz Escobar resting on the bench inside the police station and, upon recognizing him, decided not to press charges and offered to take him home. The State claimed that Walter Munárriz Escobar remained at the police station on his own volition, and showed signs of being inebriated.

25. The State reported that Walter Munárriz was only at the Lircay police station for a short time, and that he left there at approximately 5 a.m. on the same day, and was seen by two witnesses who fully recognized him and reported that he was walking in the area of the Jr. Olimpico towards the Bellavista neighborhood, and showed visible symptoms of inebriation.

26. The State reported that the police personnel involved never denied either their participation in the events early that morning or their identity. It contended that the version provided by the witness, Marcos Leonidas Sierra Tueros, regarding the alleged abusive treatment of which Walter Munárriz was a victim at the police station was false, and was prompted by a member of the family of the alleged victim – who was a relative of the judge hearing his criminal case- in an attempt to incriminate the police officers in exchange for assistance in a criminal proceeding in which he was involved.

27. With regard to the obligation **to adopt the provisions of domestic law**, the State did not submit any pleadings. On the contrary, in Report No. 004-2011-FSPNC-MP-FN of April 4, 2011, the Coordinating Prosecutor of the Superior National Criminal Prosecution Office and the Supraprovincial Criminal Prosecution Offices pointed out that "the terms of Article 320 of the Criminal Code are not in line with the classification of the Crime of Forced Disappearance according to the aforesaid international standards, since the criminal classification in our domestic legal system is restrictive."<sup>3</sup>

28. In general, the State contended that it not have responsibility, either in conjunction with the alleged forced disappearance of Walter Munárriz Escobar, or with regard to Articles 8 and 25 of the American Convention, considered together with Articles 1.1 and 2 of that instrument.

#### IV. PROVEN FACTS

29. The Commission considers that it is relevant to recall that according to inter-American jurisprudence, the standards of proof are less rigid than in domestic legal systems and that it is possible "to freely evaluate evidence."<sup>4</sup> The Inter-American Court has found that "a standard of proof that takes into account the seriousness of the international responsibility of the State should be used, and, that nonetheless, said standard should be capable of creating the conviction of the truth of the alleged facts."<sup>5</sup> The Court has noted that it is "legitimate to use circumstantial evidence, and indications and presumptions to support a judgment provided conclusions consistent with the facts can be inferred from them."<sup>6</sup>

30. The Commission points out that in cases alleging a possible forced disappearance, it is the practice of the organs of the inter-American system to pay particular attention to the nature of this violation, the purpose of which is to erase any material trace of a crime, and is usually followed by a series of acts and omissions on the part of state agents seeking to cover up the event through manoeuvres beginning with denial of deprivation of liberty, continuing with disinformation or false information on the whereabouts or fate of the

---

<sup>3</sup> Annex 1. Report N° 004-2011-FSPNC-MP-FN of April 4, 2011, submitted as an annex to the State's Memorandum No. 7-5-M/785 of December 5, 2011.

<sup>4</sup> Inter-American Court. *Case of Velásquez Rodríguez Vs. Honduras*. Merits, Judgment of July 29, 1988, Series C No. 4, paras. 127 and 128.

<sup>5</sup> Inter-American Court, *Case of González Medina and family vs. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, para. 132.

<sup>6</sup> Inter-American Court. *Case of González Medina and family vs. Dominican Republic*, Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, para. 134. Citing: *Case of Dos Erres Massacre Vs. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2009, Series C No. 21, para. 197.

victims, and including ineffective investigations with little due diligence which, far from establishing the truth, perpetuate the lack of knowledge with regard to what happened to the victim.<sup>7</sup>

31. Along the same lines, the Court has found that in a case of alleged forced disappearance, the evidentiary and presumptive proof is particularly important, since “this type of violation is characterized by an attempt to suppress all information that would provide proof of the detention, whereabouts, and fate of the victims.”<sup>8</sup>

32. The Commission will now give its opinion on the facts that it regards as proven and will evaluate them in the light of the relevant provisions of the American Convention and the Inter-American Convention on the Forced Disappearance of Persons.

#### **A. Detention and disappearance of Walter Munárriz Escobar**

33. According to the petitioners, Walter Munárriz Escobar, 19 years of age, was in his second year at the Mining Engineering School of the University of Huancavelica, and he lived with his mother, Gladys Justina Escobar Candiotti, and his five siblings: Eric, Gladys, Amparo, Junior, and Alaín.<sup>9</sup>

32. The parties agree on the basic facts which are described in the following paragraphs 33 and 34. Moreover, these facts were established in the judgment of May 25, 2004. In view of the fact that the description in that judicial ruling is consistent with the narration of the parties, and that said narration is also internally consistent, the Commission considers these facts as established.

33. Walter Munárriz was detained early in the morning of March 20, 1999, by a noncommissioned officer of the Peruvian National Police (PNP) and taken to the Lircay police station in Peru, after having entered the room of two guests at “Los Manolos” Hotel.<sup>10</sup> The petitioners gave a consistent description, uncontested by the State, to the effect that said room was inhabited by a police officer and his wife. According to the petitioners, Walter Munárriz Escobar went to that hotel to visit his friend Jorge Suárez, who was staying there. The Commission does not have any documents supporting the constitutional and/or legal basis for detention in these circumstances. Neither does it have any record that Walter Munárriz Escobar was taken to the Lircay police station. On the contrary, the State acknowledged that no official documents were issued in this regard.

34. Walter Munárriz was taken to the Lircay police station at approximately 4:10 a.m. by officer Gunther Cuaresma Ramos.<sup>11</sup> Minutes later, the owner of “Los Manolos” hotel, Maura Romero Bendezú, appeared at the police station in person with her brother, and when she realized that the person in question was Walter Munárriz Escobar, whom she had known since he was a child<sup>12</sup> and knew to be a well-behaved person, she told Officer Adolfo Ángeles Ramos that she would not file a complaint against him.<sup>13</sup> When Mrs. Maura

---

<sup>7</sup> IACHR. Report No. 111/09. *Case 11324. Merits. Narciso González Medina*. Dominican Republic, November 10, 2009. Para. 56.

<sup>8</sup> Inter-American Court, Corte IDH. *Case of González Medina and family vs. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012, Series C No. 240, para. 134.

<sup>9</sup> Annex 2. Initial petition of June 23, 2005.

<sup>10</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>11</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>12</sup> Annex 4. Statement by Mrs. Maura Romero on March 27, 1999, to the Inspector of the Angaraes Provincial PNP Headquarters. Annex to the States Memorandum No. 7-5-M/438 of October 1, 2007. In that statement, Mrs. Romero declare that she had known Walter Munárriz Escobar since he was a child “due to a shared field owned by distant relatives of the mother of the same, Mrs. Gladys Escobar Candiotti, and to the fact that she was a friend of the entire family.”

<sup>13</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

Romero left, at approximately 4:30 a.m. of the same day, March 20, 1999, Walter Munárriz remained at the police station in the custody of the State.<sup>14</sup>

35. Since then, there has been no word as to his fate or whereabouts.

36. Marcos Leónidas Sierras Tueros, who on the day of the events was detained at the Lircay police station, told personnel of the Office of the People's Defender that early in the morning on that day, he heard the cries of a person saying "don't hit me anymore," and was able to distinguish the voices of the aggressors as noncommissioned officers Cuaresma Ramos and Ángeles Ramos as the aggressors. He added that he and Raúl Donayres Huamán, were coerced into declaring to the Provincial Prosecutor and to any other official that nothing had happened that morning.<sup>15</sup> According to the report of the Office of the People's Defender, "Raúl Donayres Huamán, who was detained until March 25, at one point in time approached the Office's driver and told him that he wanted to provide information on the facts, and that he would telephone him [...], since he did not feel safe in that city, and quickly added that on the day of the events, he heard moans coming from the Prevention Office, and that noncommissioned PNP SO2 Cuaresma Ramos was an arrogant, short-tempered person."<sup>16</sup> The Commission does not have any information as to whether the Office of the People's Defender subsequently interviewed Raúl Donayres Huamán.

37. In an interview with the Human Rights Commission (COMISEDH), Mrs. Gladys Escobar, the mother of the alleged victim, stated that on that same day of March 20, 1999, between 8:00 and 8:30 in the morning, as she was walking to work, she encountered the brother of the owner of "Los Manolos" Hotel, who informed her that her son Walter Munárriz Escobar had been detained in the early morning hours, but that "they must have released him," he said, because my sister Maura did not press charges against him because she knows him."<sup>17</sup> During that same interview, Mrs. Escobar said that at two o'clock in the afternoon of that same day, when she could not find her son, she imagined that he must have gone with his two younger brothers to Huancavelica. At midnight when her two younger sons returned without Walter, Mrs. Escobar Candiotti, together with another older son, "went to make inquiries, we asked his friends, and even asked people in the area of the police station and nobody had seen him, my son had vanished, and so, even more worried, I went back to the police and said sir, I cannot find my son anywhere." Mrs. Escobar explained that at the police station, they told her that her son had left there at 5 a.m. and she asked if she could look around the station, where she found two persons in detention, but not her son.<sup>18</sup> The State did not dispute either the fact that Walter Munárriz Escobar's mother had appeared in person at the Lircay police station or her account of what she had been told.

38. The State said that two persons, Juan Martín Silva González and Lucinda Ponce Saforas, saw Walter Munárriz Escobar in the vicinity of the Lircay police station at around 5:15 a.m. on that Saturday March 20, 1999. Both persons gave a statement to the judicial authorities. Although in its judgment of May 25, 2004, the Huancavelica Joint Superior Court referred to those testimonies as "exonerating" evidence, the Commission takes note that the same Court had previously dismissed it. The Superior Court, in its judgment of February 15, 2001, stated:

[...] the exonerating testimonies [...] do not have a basis in truth, as it is neither homogeneous, consistent, nor uniform [...] has been completely discredited with the judicial inspection on page five hundred fifty-one, in which, based on the principle of immediacy, it was categorically demonstrated that it is materially impossible to distinguish and identify a person from the distance indicated by the witnesses in question [...].<sup>19</sup>

<sup>14</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>15</sup> Annex 5, Preliminary report of the Office of the People's Defender. Annex to the initial petition.

<sup>16</sup> Annex 6, Report of the Office of the People's Defender of March 29, 1999. Annex 20 of the initial petition.

<sup>17</sup> Annex 7. COMISEDH interview with Mrs. Gladys Escobar Candiotti on April 29, 1999. Annex 39 the initial petition.

<sup>18</sup> Annex 7. COMISEDH interview with Mrs. Gladys Escobar Candiotti on April 29, 1999. Annex 39 the initial petition.

<sup>19</sup> Annex 8. Judgment of February 15, 2001. Annex to State Communication. Note No. 7-5-M/066 of February 9, 2006

39. Along similar lines, in its March 29, 1999 report, the Office of the People's Defender pointed to contradictions in the statements of the participants, including both the persons at "Los Manolos" Hotel and the police officers. The Office of the People's Defender also referred to the statement of witness Juan Martín Silva González to the effect that he had seen the disappeared person in the early morning hours of March 20, 1999, qualifying that testimony as refutable. Thus, the Office of the People's Defender underlined the fact that the disappeared person had not been seen by any other citizen, especially in light of the fact that Saturdays are market days that draw many merchants."<sup>20</sup>

40. Moreover, the Office of the People's Defender said that in the declaration of Marcos Sierras Tueros to that office, he stated that Mrs. Lucinda Ponce Sáfora, who supports him, told him that "she had been lectured to declare that early in the morning on that day, she saw a young man with long hair crossing the street on which the Lircay police station was located."<sup>21</sup>

41. The Commission does not have any element of proof that corroborates the statement of the police officers to the effect that they released Walter Munárriz Escobar. As indicated earlier, the Peruvian State acknowledged that there was no record of his arrest, or of his entry into the Lircay police station or his alleged release.

42. In addition to the testimonies questioned internally for which there is evidence of manipulation, the State has not provided any further evidence demonstrating its hypothesis. Thus the Commission considers as established fact that the last time that Walter Munárriz Escobar was seen, he was in the custody of the State.

43. In addition to the reports which are described later and which gave rise to the criminal investigation, in April 1999 the mother of Walter Munárriz Escobar presented letters to the People's Defender, the Minister of the Interior, and the Chairman of the Human Rights Committee in the National Congress requesting support for the investigation into the disappearance of her son.<sup>22</sup>

44. As will be indicated later in this report, the criminal investigations failed to clarify what happened to Walter Munárriz Escobar.

## **B. Internal proceedings related to the disappearance of Walter Munárriz Escobar**

### **1. Criminal investigation**

45. The petitioners reported that on the day after the disappearance of Walter Munárriz Escobar, his mother, Gladys Escobar Candiotti, went to the Lircay Provincial Prosecutor's Office to file the corresponding complaint. However, they state that the Prosecutor on duty, Silvia Montero Meléndez, refused to receive her complaint and told her: "What do you think, lady, that policemen are thugs, that we're living in the days of terrorism, or what," adding that she needed to wait two months before filing a complaint<sup>23</sup>. Thus in the expanded complaint presented to the Office of the People's Defender on March 25, 1999, Mrs. Escobar Candiotti requested that a specific record be made of the fact that "Prosecutor Silvia Montero Meléndez refused to receive my complaint saying that I should return in 60 days."<sup>24</sup> The State did not object to the allegation of Mrs. Escobar regarding the initial refusal of Prosecutor Montero to receive the complaint.

<sup>20</sup> Annex 6. Report of the Office of the People's Defender, March 29, 1999. Annex 20 of the initial petition.

<sup>21</sup> Annex 9. Report of the Office of the People's Defender, March 31, 1999. Annex 23 of the initial petition.

<sup>22</sup> Annex 10. Copies of the letters sent to the People's Defender, the Minister of the Interior, and the Chairman of the Human Rights Committee of the National Congress. Initial petition of June 23, 2005.

<sup>23</sup> Annex 7. Statement of Mrs. Gladys Escobar to the COMISEDH attorney given on April 29, 1999.

<sup>24</sup> Annex 11. Addendum to the complaint before the Office of the People's Defender. Annex to the initial petition of June 23, 2005.

46. On March 22, 1999, Mrs. Escobar Candiotti filed a complaint pertaining to the disappearance of her son with the Lircay police station.<sup>25</sup> In his statement at the initial proceeding, PNP Captain Roberto Gastiaturú Nakada referred to the complaint filed with the police by the mother and sister of Walter Munárriz Escobar, and to the alleged efforts by the police itself to find him.<sup>26</sup>

47. On March 23 of that year, Mrs. Escobar Candiotti filed a formal criminal complaint against the personnel on duty at the police station on the day her son disappeared<sup>27</sup>.

48. In an interview which the Office of the People's Defender held on March 25, 1999 with the Prosecutor in charge of the investigation at the time, Silvia Montero Meléndez, she stated as follows:

[...] my office has opened the relevant investigations into the alleged disappearance of citizen Walter Munárriz Escobar, and we have collected statements from the following persons: Marcos Leónidas Sierra Tueros, Raúl Donayres Huaman, [illegible], Máximo Romero Bendezu, Lucinda Ponce Sáforas, Mary Lilian Lizarme Luis, Luis Angel [illegible], Patrick Jeanette Flores Mendoza de Gutiérrez [...].<sup>28</sup>

49. The commissioner responsible in the Office of the People's Defender wrote in the management report on said meeting that the Prosecutor stated that "I am personally conducting the investigations, and have requested the support of the Huancavelica Division, in official letter No. 125.99 [illegible] including a request for tracking mobility [...] to try to locate the student in question. The Provincial Prosecutor added that her office is doing everything necessary to properly clarify the facts."<sup>29</sup>

50. The Commission notes that on March 27 of the same year, the Provincial Municipality of Angaraes, the Defense and Development Committees of the three districts of Lircay, the Academic Professional Mining School, and the "public in general" sent a request to the Huancavelica Senior Prosecutor requesting that "an ad hoc prosecutor be appointed, since the current Provincial Prosecutor of Lircay, Silvia Montero Meléndez, is blatantly biased as she has agreed with the versions given by the National Police, instead of safeguarding the interests or rights of the citizens of this community."<sup>30</sup> On May 3, 1999, the Superior Prosecution Office for Government Management of the Judicial District issued a decision in which it referred to the case of Walter Munárriz Escobar in the following terms:

[...] to remove Dr. Silvia Montero Meléndez from this case, due to her manifest negligence, delay in conducting prior investigations into the case, and the fact that the people of Lircay-Angaraes and the family members of the disappeared student all distrust her [...].<sup>31</sup>

<sup>25</sup> Annex 12. Complaint filed with the Lircay police station on March 22, 1999. Annex 4 of the initial petition.

<sup>26</sup> Annex 13. Prosecutorial decision No. 01-2000. Annex to the State's memorandum No. 7-5-M/066 of February 9, 2006. Specifically, it stated that "[...] since there was no complaint filed against him, he ordered that he be released at approximately 5:15 a.m., then heading in the police car together with PNP S02 Percy Bladimir Salvatierra Laura and PNP SOT3 Carlos Hugo Valdivia Urrutia [...] they patrolled the Julcani Mine, pursuant to an order issued by PNP Colonel Lingan Ríos, arriving there at 7:30 am, and leaving at 11:00 am, and later conducted an inspection at the Ccochaccasa police station, and returned at approximately 1:45. On Sunday March 21, 1999, on Andres Avelino Cáceres at the fiesta of Guinda, Tuna y Cochinilla, he was approached by Mr. Genebrando Aranda, who was accompanied by Mrs. Gladys Justina Escobar Candiotti and her daughter Gladys Munárriz Escobar, who told him that Walter had disappeared, and so he told them that she should go to the police station to file a report, and that he would tell his superior, Colonel Lingán Ríos about this on March 22, 1999, since police personnel were implicated, and he also requested specialized personnel to investigate the case; and on March 24, 1999, he asked the Angaraes Joint Provincial Prosecutor's Office to conduct the investigations [...]. With police personnel and firemen from Huancavelica, they searched high and low in an attempt to locate the disappeared person, Walter Munárriz Escobar, without success [...].

<sup>27</sup> Annex 14. Formal complaint filed by Mrs. Gladys Escobar Candiotti on March 23, 1999. Annex 6 of the initial petition.

<sup>28</sup> Annex 15. Management report of the Office of the People's Defender dated March 25, 1999. Interview with Silvia Montero Meléndez. Annex 11 to the initial petition.

<sup>29</sup> Annex 15. Management report of the Office of the People's Defender dated March 25, 1999. Interview with Silvia Montero Meléndez. Annex 11 to the initial petition.

<sup>30</sup> Annex 16. Letter of March 27, 1999 sent to the Huancavelica Senior Prosecutor.

<sup>31</sup> Annex 17. Decision of the Office of the Superior Prosecutor for Government Management of the Judicial District, May 3, 1999. Annex to the initial petition.

51. On April 23, 1999, the Angaraes Joint Prosecutor's Office brought formal charges against the following officers: PNP Captain Roberto Gastiaburú Nakada, PNP Lieutenant Claudio Gutiérrez Velásquez, and PNP noncommissioned Officer Adolfo Ángeles Ramos, for committing the crime against humanity of forced disappearance, to the detriment of Walter Munárriz Escobar.<sup>32</sup> On April 26 of that year, the court in question opened a probable cause proceeding against these three officers and issued a warrant for their arrest.<sup>33</sup>

52. On June 24, 1999, the court expanded the proceeding to include PNP noncommissioned officers Gunther Cuaresma Ramos, Percy Bladimir Salvatierra, and Carlos Hugo Valdivia Urrutia, also issuing arrest warrants for them.<sup>34</sup> In that decision, the Joint Angaraes-Liray Court decided as follows:

[...] As described by the representative of the Public Prosecutor, evidence and presumptions arise from the proceedings but they depart from the actual facts, those members of the police force also participated in the disappearance of the injured minor, since on the night of the events he was turned over to the police station by PNP noncommissioned officer Cuaresma Ramos, without any documents, and when advised of the events only on the following day, he made them up, at the order of his superiors; and, to cover up his responsibility, he falsified the truth by saying that he made the respective document available to the officer responsible for reports and assistance on duty, which was not the case. Similarly, PNP noncommissioned officer Percy Bladimir Salvatierra Lauda gave contradictory versions of his actions during the night of the events, and coincidentally Cuaresma Ramos, Valdivia Urrutia, and PNP Captain Gastiaburú Nakada went on an unannounced visit in the police station's Comancar vehicle to the Julcani mining settlement, taking their time only in their travel to that place, an excessive time of over two hours; these acts lead us to the conviction that the three police officers also participated in the events under investigation [...].<sup>35</sup>

53. In prosecution decision No. 01-2000 of January 19, 2000, the Public Prosecutor verified the criminal offense of the forced disappearance of Walter Munárriz Escobar, and determined as perpetrators Roberto Eugenio Gastiaburú Nakada, Claudio Tomás Gutiérrez Velásquez, Adolfo Edgar Ángeles Ramos, Percy Bladimir Salvatierra, and Gunther Cuaresma Ramos.<sup>36</sup> In criminal accusation No. 010-2000 dated June 1, 2000; the Huancavelica Joint Senior Prosecutor's Office issued an indictment against PNP Captain Roberto Eugenio Gastiaburú Nakada, against Lieutenant Claudio Tomás Gutiérrez Velásquez, against PNP SO2 Adolfo Edgar Ángeles Ramos, against PNP noncommissioned officer Percy Bladimir Salvatierra, and against PNP SO2 Gunther Cuaresma Ramos.<sup>37</sup> In accusation No. 018-2000 of August 7, 2000, the same Senior Prosecutor's Office issued an indictment against PNP noncommissioned officer Carlos Hugo Valdivia Urrutia, for the same

<sup>32</sup> Annex 18. Copy of the formal charges 22-99 filed on April 23, 1999. Annex to Report No. 010-2006- JUS/CNDH-SE/CESAPI of January 30, 2006, submitted by the State in Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>33</sup> Annex 19. Copy of the court document opening a preliminary probable cause proceeding dated April 26, 1999. Annex to Report No. 010-2006- JUS/CNDH-SE/CESAPI of January 30, 2006, presented by the State in Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>34</sup> Annex 20. Copy of Decision No. 34 of June 24, 1999, Annex to Report No. 010-2006- JUS/CNDH-SE/CESAPI of January 30, 2006, submitted by the State in Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>35</sup> Annex 20. Copy of Decision No. 34 of June 24, 1999, Annex to Report No. 010-2006- JUS/CNDH-SE/CESAPI of January 30, 2006, submitted by the State in Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>36</sup> Annex 13. Prosecutorial Decision No. 01-2000 of January 19, 2000. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>37</sup> Annex 21. Prosecutorial Decision No. 01-2000 of January 19, 2000. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

crime, to the detriment of Walter Munárriz Escobar.<sup>38</sup> On August 14, 2000, the Huancavelica Superior Court of Justice issued an indictment against all of the officers cited.<sup>39</sup>

54. The preliminary hearing included the collection of pretrial statements of the accused, testimonial statements of witnesses, expert opinions, confrontation of witnesses, and judicial inspections. In its judgment of February 15, 2001, the Joint Chamber of the Superior Court of Justice convicted officers Roberto Eugenio Gastiaturú Nakada and Adolfo Ángeles Ramos of committing a crime against humanity in the form of forced disappearance, to the detriment of Walter Munárriz Escobar, and sentenced them to eighteen years in prison, professional disqualification, and payment of 20,000 new soles by way of civil reparations. The rest of the defendants were acquitted.<sup>40</sup>

55. These are some of the deliberations of the Joint Chamber:

[...] fully proven the detention of the disappeared person, Walter Munárriz Escobar, in the circumstances referred to in the preceding preambular section, by defendant Gunther Cuaresma Ramos, it not being relevant to the criminal offense of this hearing to analyze the legitimacy of that intervention; of relevance, however, as a reproach for criminal liability for the crime of forced disappearance being judged, is the fact that the accused, as fully demonstrated with sufficient evidence, left the detainee after having performed his police function of detention on a public street, based on the verbal complaint made by Mrs. Patrick Flores de Gutiérrez and after having informed his co-defendant Angeles Ramos, as is also verified in the court documents, to subsequently [...] proceed to withdraw to rest in the dormitories of the police station as his shift had ended, with the subsequent shift being that of his codefendant Angeles Ramos; it being consequently for that reason that defendant Gunther Cuaresma Ramos cannot be convicted for criminal responsibility for the crime that is the subject of this proceeding, because [...] the causal relationship between his action and the result was broken, in accordance with the elements comprising the crime of forced disappearance [...]. FIFTH. [...] the defendant, noncommissioned officer Adolfo Edgar Ángeles Ramos, who engaged in police action involving the detainee, Walter Munárriz Escobar, since during his shift he was on duty as the Reports and Assistance Officer of the Lircay police station; he did not just confine his activity to maintaining the detention of Walter Munárriz Escobar, who was left under his responsibility with the appropriate report, as verified in court documents, but he also took action that amounted to deprivation of the liberty of the disappeared person, Walter Munárriz Escobar [...] which also included at the scene of the crime Peruvian National Police Captain Roberto Gastiaturú Nakada, as he is [...] the person who not only assumed responsibility for the detainee in his capacity as Chief of the Lircay Police Department [...] but also ordered his detention, by ordering his co-defendant Angeles Ramos “to bring him here” when the detainee, now a disappeared person, was preparing to leave the police station on his own, a corroborated version [...], authorized the detainee Walter Munárriz Escobar to be taken from the police station where he was detained, stubbornly insisting that the disappeared person was not being detained but that he was “intervened,” using that term to so as to exclude himself from punitive responsibility, in vain, [...] there is no legal certainty that in fact the detainee was released in the early morning hours of Saturday, March twenty, nineteen hundred ninety-nine at approximately five fifteen in the morning; also because the testimony of witnesses [...] has no basis in the truth; [...]<sup>41</sup>

<sup>38</sup> Annex 22. Prosecutorial Decision No. 01-2000 of January 19, 2000. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>39</sup> Annex 23. Decision No. 100 of August 14, 2000. Annex to State Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>40</sup> Annex 8. Copy of the judgment of February 15, 2001. Annex to the State’s Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>41</sup> Annex 8. Copy of the judgment of February 15, 2001. Annex to the State’s Memorandum No. 7-5-M/066 of February 9, 2006.

56. On December 13, 2001, the Supreme Criminal Chamber vacated the judgment of the lower court due to the procedural irregularities of the Superior Criminal Court, and ordered that court to hold a new oral proceeding.<sup>42</sup> This decision stated that:

[...] from the review of court documents, it was discovered that the court committed a series of irregularities during the oral proceedings; it failed to read out the prosecutor's criminal indictment [...]; it examined each of the defendants separately, but it failed to perform its duty to read out the defendants' statements prior to the oral hearing [...]; there are expanded charges, which were issued and presented after the pleadings of the defense, as is verified in the record of the reading of the sentence on page two thousand seven, it being noted in this regard that there is no order of any kind to issue the expanded indictment; the same hearing record also shows that the Factual Issues were not read out, despite the fact that the sentence to be imposed was effective; moreover, neither the Factual Issues nor the Judgment on the crime was certified by the Secretary of the Superior Criminal Court; thereby incurring cause for nullity [...].<sup>43</sup>

57. In a decision rendered on April 1, 2002, the Joint Chamber of the Huancavelica Superior Court of Justice granted the immediate release of defendants Roberto Eugenio Gastiaburu Nakada and Adolfo Edgar Ángeles Ramos.<sup>44</sup>

58. After holding a new oral trial, on May 25, 2004, the Huancavelica Joint Chamber of the Superior Court of Justice acquitted all of the defendants, with regard to both the sentence and civil responsibility for having "proven the disappearance of the injured party, Walter Munárriz Escobar, but not the criminal liability of the defendants [...];"<sup>45</sup> it decided to provisionally close the case and ordered the continuation of the investigations "into the whereabouts of the injured party, as well as the persons presumed to be responsible for forced disappearance."<sup>46</sup> Appeals for nullity [*recursos de nulidad*] were filed against the acquittal judgment and, on October 20, 2004, the Permanent Criminal Chamber of the Supreme Court of Justice ruled against nullity of the judgment of May 25, 2004, stating:

[...]That in the case of court records, evidence presented during the proceedings was insufficient to unequivocally confirm the criminal assumptions against defendants Roberto Eugenio Gastiaburú Nakada, Adolfo Edgar Ángeles Ramos, Claudio Tomás Gutiérrez Velásquez, Gunther Cuaresma Ramos, Percy Salvatierra Laura, and Carlos Hugo Valdivia Urrutia, members of the National Peruvian Police, who were imputed to have participated in the disappearance of the injured party, Walter Munarriz Escobar [...] That despite having proven that the injured party was taken to and detained at the facilities of the city police station, court documents do not provide evidence that would corroborate the contradictory accusation of Leonidas Marcos Sierra Tueros, who, in the oral proceeding (see page two thousand five hundred eighty-nine), finally makes a statement against the defendants to the effect that he heard noises, sharp blows, and the sobs of a young man when he was in the jail cells of the police department early in the morning of the events, as the statement does not hold true, and if he made a statement to that effect it was because of the offer made to him by a family member of the injured party to help him in a criminal proceeding for which he would be imprisoned [...], so that there is reasonable doubt regarding his participation in committing the investigated crimes that benefits the defendants in strict application of the

<sup>42</sup> Annex 24. Copy of the Supreme Final Judgment of December 13, 2001. Annex to the State's Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>43</sup> Annex 24. Copy of the Supreme Final Judgment of December 13, 2001. Annex to the State's Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>44</sup> Annex 25. Copy of the judgment of April 1, 2001. Annex to the initial petition.

<sup>45</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to the State's Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>46</sup> Annex 3. Copy of the judgment of May 25, 2004. Annex to the State's Memorandum No. 7-5-M/066 of February 9, 2006.

principle of *indubio pro reo*; consequently, the decision of the Superior Chamber is in accordance with the law [...]<sup>47</sup>

59. In report No. 245-2009-JUS/PPES del 3 of August 3, 2009, the State transmitted to the IACHR the report of the *Procuraduría Pública* of the Judicial Branch, which stated as follows:

The case of Walter Munárriz Escobar was subject to both a preliminary and a judicial investigation; ultimately, in keeping with the principle of independence in exercising jurisdictional function, the latter acquitted the alleged authors of the crime of forced disappearance, in a judicial process under the protection of the constitutional principle of *cosa juzgada*, with the Supreme Court ruling at the highest jurisdictional level against nullity of the acquittal judgment.<sup>48</sup>

60. From the information provided by the parties, the Commission notes that, after the decision of October 20, 2004 of the Permanent Criminal Chamber of the Supreme Court of Justice, there were no further investigations into the disappearance of Walter Munárriz Escobar. Nor were any steps taken to determine his whereabouts or to find his mortal remains. And this, despite the fact that in the judgment that remains firm, namely the judgment of May 25, 2004, the Joint Chamber of the Superior Court of Justice ruled that the disappearance of Walter Munárriz Escobar was proven and ordered that investigations continue.

## 2. Disciplinary process

61. In Report No. 133-2007-JUS/CNDH-SE/CESAPI, of September 12, 2007, the State sent to the Commission documentation regarding administrative-disciplinary investigations related to the alleged disappearance of Walter Munárriz Escobar by personnel of the Angaraes PNP Provincial Headquarters.

62. The State submitted Report No. 014-99-FPAH-SRPMP-HVCA/INSP.C, of April 8, 1999, in which it indicated that on March 24, 1999, the Provincial Prosecutor of Lircay-Angaraes, Silvia Montero Meléndez, sent letter No. 125-99-MP-FPMANGARAES to the PNP Colonel of the Huancavelica Subregion, in which she announced the disappearance of Walter Munárriz Escobar and the presumed involvement of state agents. In this letter, the Prosecutor stated that “this will surely be clarified with the investigations conducted by this office [...], as these versions are completely false, since we are experiencing a period of peace and we do not have human rights violations.”<sup>49</sup> Thus the Prosecutor asked the PNP Colonel of the Huancavelica Subregion, since it is his job to clarify crimes reported, to assist in the investigations to find Walter Munárriz Escobar and “especially to clear the name of the institutions we represent and ensure that they remain a source of pride.”<sup>50</sup>

63. Among the steps taken, referred to in Report 014-99-FPAH-SRPMP-HVCA/INSP.C, it is noted that the Inspector-Commander of the National Police of Peru:

- a) Interviewed the police officers involved in the events;
- b) Obtained a copy of the Staff Duty Roll of the Angaraes Provincial Headquarters for March 19 and 20, 1999,
- c) Requested a copy of the background of three officers, and

<sup>47</sup> Annex 26. Copy of the decision of the Permanent Criminal Chamber of the Supreme Court of Justice of October 20, 2004. Annex to the State’s Memorandum No. 7-5-M/066 of February 9, 2006.

<sup>48</sup> Annex 27. Official Letter No. 2339-09-CE-PJ/PP of September 28, 2009, sent as an Annex to the State’s memorandum No. 7-5-M/690 of October 20, 2009.

<sup>49</sup> Annex 28. Copy of Report 014-99-FPAH-SRPMP-HVCA/INSP.C, sent as an annex to the State’s memorandum No. 7-5-M/409 of September 17, 2007.

<sup>50</sup> Annex 28. Copy of Report 014-99-FPAH-SRPMP-HVCA/INSP.C, sent as an annex to the State’s memorandum No. 7-5-M/409 of September 17, 2007.

d) Obtained a copy of Police Report No. 30-99 on the disappearance of Walter Munárriz Escobar, prepared by the staff of the Huancavelica PNP Criminal Investigation Department, with regards to the disappearance of Walter Munárriz Escobar.<sup>51</sup>

64. The conclusions reached by the Huancavelica Commander Inspector of the PNP Inspectorate are as follows:

A. It is established fact that PNP Captain Roberto GASTIABURU NAKADA is liable for NEGLIGENCE in the performance of his duties as Police Captain of Lircay, by not requiring PNP SO2 Gunther CUARESMA RAMOS to prepare in a timely manner the relevant referral report for civilian Walter Munárriz Escobar (19), for alleged theft, and for engaging in inappropriate police procedures, by releasing the detainee and subsequently receiving the complaint from Mrs. Gladys ESCOBAR CANDIOTTI, the mother of the civilian in question regarding the alleged disappearance of that person [...]. The Undersigned has therefore imposed the disciplinary sanction of SIX (06) days of simple arrest.

B. It is established fact that PNP SO2 Adolfo E. ANGELES RAMOS, is liable for the misdemeanor of DISOBEDIENCE for failure to comply with the police operating procedures and/or directives in his capacity as the Reports and Accident Assistance Officer of the Lircay police station, on receiving the detainee Walter Munárriz Escobar (19), on presumption of theft, from PNP SO2 Gunther CUARESMA RAMOS, without the respective report, and subsequently give cause for complaints against police personnel for the alleged disappearance of the cited civilian up to the date of [...]. Thus a disciplinary sanction of TEN (10) days of simple arrest is imposed.

C. It is established fact that PNP SO2 Gunther CUARESMA RAMOS is liable for the misdemeanor of DISOBEDIENCE for failure to comply with police operating procedures and/or directives, by placing the detainee, Walter Munárriz Escobar (19) at the disposal of the Lircay Police Department on presumption of theft without the timely formulation of the respective report, and subsequently to have caused complaints against police personnel for the presumed disappearance of the aforesaid civilian up to the date of, [...]. Thus he is held liable for a disciplinary sanction of TEN (10) days of simple arrest.

D. It is established fact that, by reason of the present investigation, PNP Second Lieutenant Claudio GUTIÉRREZ VELÁSQUEZ incurred liability for the misdemeanor of ABANDONMENT OF DUTY for having left Recuperada PNP station without justified cause and gone to a place in Lircay, from 2:30 pm on March 20, 1999 until 12:00 on March 21, 1999 [...]. Thus he is liable for SIX (6) days of simple arrest<sup>52</sup>.

65. The Commission has no information as to whether the disciplinary sanctions imposed were carried out.

### 3. Investigation of the Office of the People's Defender

66. On March 23, 1999, Emilio Torralba Rivero, a professor at the University of Huancavelica, reported the disappearance of Walter Munárriz Escobar to the Office of the People's Defender.<sup>53</sup> His mother also submitted a complaint to the same office on March 25, 1999.<sup>54</sup>

67. On March 25, 1999, the Office of the People's Defender interviewed the following persons: the mother of Walter Munárriz Escobar; Gladys Munárriz Escobar, Walter Munárriz's sister; the Angaraes

<sup>51</sup> Annex 28. Copy of Report 014-99-FPAH-SRPMP-HVCA/INSP.C, sent as an annex to the State's memorandum No. 7-5-M/409 of September 17, 2007.

<sup>52</sup> Annex 28. Copy of Report 014-99-FPAH-SRPMP-HVCA/INSP.C, sent as an annex to the State's memorandum No. 7-5-M/409 of September 17, 2007

<sup>53</sup> Annex 29. Report N° 020-099- RDP/HVCA of the Office of the Public Defender, of March 29, 1999. Annex to the initial petition.

<sup>54</sup> Annex 30. Complaint receipt sheet of the Office of the People's Defender. Annex 9 t the initial petition.

Provincial Prosecutor; Marcos Leonidas Sierra Tuero, who was detained at the Lircay police station on March 20 1999; Mrs. Maura Romero, the owner of “Los Manolos” Hotel; Juan Martín Silva González; the Municipal Director of Lircay; and, several police staff members.<sup>55</sup> Among the conclusions issued in his reports of March 1999, the People’s Defender stated:

- it is noted that the disappeared person was detained arbitrarily, without any complaint or report, since PNP sub-officer Cuaresma Ramos, at the time of the intervention, should have requested that Patrick Flores Gutiérrez and Luis Guerrero Pareja accompany him to present the corresponding charges; further he proceeded to detain him based merely on the statements of the first of the persons named [...]. In any event, the detention of Walter Munárriz Escobar should have been recorded in the appropriate books.<sup>56</sup>

- there is evidence of the disappearance of citizen Walter Munárriz Escobar at the hands of police personnel of the Provincial PNP Department of Lircay, due to the unusual activities they were engaged in on the day of the event, such as making visits to inspect the Julcaní and Ccochacasa camps; it is worth noting the extreme nervousness and tension of Captain Roberto Gaistiaburú Nakada at the time of the procedures that occurred at the Angaraes Provincial Police Department.<sup>57</sup>

68. However, it’s report No. 020-099-RDP/HVCA of March 29, 1999 report, the People’s Defender wrote:

[...] Without prejudice to the foregoing, the possibility is not ruled out that Walter Munárriz Escobar, overwhelmed by his family problems and the aforesaid events went away to someplace else [...]<sup>58</sup>

69. In his report dated April 22, 1999, taking into account all the gathered information, the Office of the People’s Defender concluded as follows:

The investigations conducted have demonstrated that citizen Walter Munárriz Escobar was arbitrarily detained at the Lircay-Angaraes Peruvian National Police Station on 3/20/99; said detention was not registered in either the books for common street crimes or the record of detainees of that police station.

During his detention, he was subjected to physical and verbal abuse by police personnel, with the following officers identified so far: PNP Lt. Claudio Gutiérrez Velásquez, and PNP SO2 officers Gunther Cuaresma Ramos and Adolfo Ángeles Ramos.

It has not been proven that Walter Munárriz Escobar was released after being detained.<sup>59</sup>

70. Furthermore, the Office of the People’s Defender stated in its October 3, 1999 report that “it is unquestionable that as a result of the negligent, biased conduct of the former Angaraes Provincial Prosecutor [...], the defendants had access to prejurisdictional investigations, when they received the initial statements at the PNP Angaraes Provincial Headquarters, which is why, in providing their statements, they made a uniform

<sup>55</sup> Annex 31 . Report N° 020-099, 021-99- RDP/HVCA of March 1999. Annex to the initial petition.

<sup>56</sup> Annex 32. Report N° 021-099- RDP/HVCA of the Office of the People’s Defender, March 30, 1999. Annex to the initial petition.

<sup>57</sup> Annex 29. I Report N° 020-099- RDP/HVCA of the Office of the People’s Defender, March 29, 1999. Annex to the initial petition.

<sup>58</sup> Annex 29. Report N° 020-099- RDP/HVCA of the Office of the People’s Defender, March 29, 1999. Annex to the initial petition.

<sup>59</sup> Annex 33. Report N° 024-099- RDP/HVCA of the Office of the People’s Defender, April 22, 1999. Annex 31 of the initial petition.

attempt to undermine the charges against them [...].”<sup>60</sup> The report concludes that “to date, the responsibility of the police involved in the referenced process has not been credibly proven, and there is a certain ‘constant refrain’ in the jurisdictional investigations. Critical evidence that could orient the direction of the process has not been acted on [...].”<sup>61</sup>

71. With regard to critical evidence not taken, in the March 31, 1999 report of the People’s Defender, reference was made to an interview with the Provincial Prosecutor, “to verify the progress of the prejurisdictional investigations into the events, noting that after taking the statements of the implicated police officers, no further steps were undertaken.”<sup>62</sup> In its October 8, 1999 report, the Office of the People’s Defender referred to evidence that the Prosecution had not taken: “the testimony of Raúl Donayres Huamán (who was also imprisoned at the Angaraes PNP Headquarters in the early morning of 3/20/99), and of Maura Romero de Raez, reconstruction measures: a) to corroborate the statements by Marcos Sierra Tueros, b) with regard to the path taken by the police vehicle early in the morning of 3/20/99; a mechanics expert to determine the condition of the AVIR police vehicle; judicial inspections at the Julcani, Ccochaccasa, and Recuperada mining camps; the testimony of PNP SO2 officer Jorge Carey Romero, PNP SO1 Hugo Quispe Natividad, and PNP SO1 José Paco Nolzco, police officers who were on duty at the Recuperada Mine.”<sup>63</sup>

72. According to the petitioners, the information and evidence obtained by the Office of the People’s Defender were made available to the Office of the Public Prosecution for its consideration, as part of the investigation into the disappearance of Walter Munárriz Escobar. In this regard, one of the recommendations of the October 8, 1999 report was precisely to maintain “ongoing contact with the judges who are currently investigating the events, to assist in clarifying the facts.”<sup>64</sup>

## V. LEGAL ANALYSIS

73. In view of the positions of the parties and the proven facts, the Commission will conduct its analysis of the merits in two sections. First, the IACHR will analyze available information on the alleged forced disappearance in the light of the American Convention on Human Rights and the Inter-American Convention on the Forced Disappearance of Persons [CIDFP]. Secondly, the IACHR will analyze the investigations and proceedings initiated internally as a result of those facts and in the light of the same international instruments.

### A. **Rights to recognition as a person before the law, to personal liberty, to humane treatment, and to life (Articles 3.1, 7.1, 7.2, 7.3, 7.4, 7.5, 5.1, 5.2, and 4.1, considered in conjunction with Article 1.1 of the American Convention); obligation referred to in Article 1.a) of the Inter-American Convention on the Forced Disappearance of Persons, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.**

74. In this section, the Commission will analyze if what happened to Walter Munárriz Escobar constitute a forced disappearance, and therefore if it constitutes a violation of the rights to recognition as a person before the law, to life, to humane treatment, and to personal liberty, to his detriment, all to be considered in conjunction with the State’s obligation to respect said rights.

<sup>60</sup> Annex 34. Report N° 033-099- RDP/HVCA of the Office of the People’s Defender, October 8, 1999. Annex 51 of the initial petition.

<sup>61</sup> Annex 34. Report N° 033-099- RDP/HVCA of the Office of the People’s Defender, October 8, 1999. Annex 51 of the initial petition.

<sup>62</sup> Annex 35. Report N° 022-099- RDP/HVCA of the Office of the People’s Defender, March 31, 1999. Annex to the initial petition.

<sup>63</sup> Annex 34. Report N° 033-099- RDP/HVCA of the Office of the People’s Defender, October 8, 1999. Annex 51 of the initial petition.

<sup>64</sup> Annex 34. Report N° 033-099- RDP/HVCA of the Office of the People’s Defender, October 8, 1999. Annex 51 of the initial petition.

75. Article 3 of the American Convention establishes:
- Every person has the right to recognition as a person before the law.
76. Article 4.1 of the Convention stipulates:
- 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.
77. Article 5 of the Convention establishes in the relevant parts:
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.
- (...)
78. Article 7 of the Convention establishes, in its relevant parts:
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.
- (...)
79. Article 1.1 of the Convention establishes:
- The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
80. For its part, Article 1.a) of the Inter-American Convention on Forced Disappearance of Persons stipulates as follows:
- Article I
- The States Parties to this Convention undertake:
- a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;
81. As for the Inter-American Convention to Prevent and Punish Torture, it states as follows in Articles 1 and 6:

1. The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

(...)

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.

### **1. General considerations on the forced disappearance of persons**

82. Since its earliest cases, the Inter-American Court has referred to the practice of forced disappearances in the following terms:

Forced or involuntary disappearance constitutes one of the most serious and cruel human rights violations, because it not only produces arbitrary deprivation of liberty, but it also endangers the integrity of the person, as well as the security and very life of the detainee. Moreover, it puts the person in a completely defenseless state, and brings in its wake other related crimes. This is why it is so important that the State adopt all necessary measures to prevent said acts, and that it investigate and punish the perpetrators, and also inform the families of the whereabouts of the disappeared persons and compensate them if appropriate.<sup>65</sup>

83. As regards the characteristics of forced disappearance, the Commission and the Court have stated that the CIDFP, along with other international instruments,<sup>66</sup> is in agreement that the following are the concurrent elements comprising forced disappearance: a) deprivation of freedom; b) the direct intervention of agents of the state or persons acting with the acquiescence of the state; and c) refusal to acknowledge the detention and to reveal the fate or whereabouts of the person in question.<sup>67</sup>

84. Moreover, the Commission has repeatedly stated that forced disappearance is a continuous or permanent violation, which in turn suggests that its effects are prolonged over time as long as the fate or whereabouts of the victim are not established. This characteristic puts the State in a situation of a continuing violation of its international obligations until such time as there is clarity regarding the fate of the victim.<sup>68</sup>

85. In view of the nature of the violation as a continuous, autonomous multiple offense, the Inter-American Court has pointed out that in analyzing a possible forced disappearance, it is important not to focus

---

<sup>65</sup> Inter-American Court, *Case of Blake Vs. Guatemala*. Preliminary objections, Judgment of July 2, 1996, Series C No. 27, para. 66.

<sup>66</sup> The Court refers to the following instruments: United Nations Economic and Social Council, Report of the Working Group on the Forced or Involuntary Disappearance of Persons, General Comments on Article 4 of the Declaration on the Protection of All Persons against Forced Disappearances of January 15, 1996 (E/CN. 4/1996/38), para. 55; and Article 2 of the International Convention for the Protection of All Persons against Forced Disappearances.

<sup>67</sup> IACHR, Report No. 111/09. Case 11324. Merits. *Narciso González Medina*. Dominican Republic, November 10, 2009, Para. 130; and Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs, Judgment of September 22, 2009, Series C No. 202, para. 60.

<sup>68</sup> IACHR, Petition to the Inter-American Court in the case of *Renato Ticona Estrada et al (12527) against the Republic of Bolivia*, August 8, 2007, para. 108.

in an isolated, divided, and fragmented way only on the detention or possible torture, or the risk of loss of life, but to focus instead on all of the facts present in the case under consideration.<sup>69</sup> In this way, the comprehensive consideration of forced disappearance as a complex human rights violation has led the Commission and the Court to examine altogether the violations of various rights recognized by the Convention.<sup>70</sup>

86. In that sense, the Court has taken a comprehensive approach to the forced disappearance of persons, due to the multiple behaviors which, joined together for a single purpose, permanently violate the legal rights protected by the American Convention.<sup>71</sup> More specifically, in these cases the Court has analyzed together violation of the rights to recognition as a person before the law, to life, to humane treatment, and to personal liberty, enshrined in Articles 3, 4, 5, and 7 of the Convention, respectively.<sup>72</sup>

87. The Commission has established that disappearance as a violation of multiple rights seeks and results in the annulment of the legal personality of the victim.<sup>73</sup> It has also considered that the connection between forced disappearance and the right to legal personality lies in the fact that the precise objective of the practice of forced disappearance is to remove the individual from the protection due to him or her<sup>74</sup>, to keep him or her out of the real and juridical world and hide his or her final destination.<sup>75</sup>

88. In the case of *Anzualdo Castro vs. Peru*, the Court considered the following:

[I]n cases of forced disappearance, in view of the multiple and complex character of this serious human rights violation, it may also entail a specific violation of the right to recognition as a person before the law. Over and above the fact that disappeared persons are unable to continue enjoying and exercising other, and possibly all, rights to which they are entitled, their disappearance is not only one of the most serious forms of removing a person from the protection of the legal system, but also denies them their very existence and leaves them to the fate of a state of limbo or a situation of legal uncertainty vis-à-vis society and the State.<sup>76</sup>

89. With regard to violations of the right to life and humane treatment, from the beginning of forced disappearance, the Tribunal has determined as follows:

Submission of detainees to repressive officials, state agents, or individuals acting with the acquiescence or tolerance of the former, who, engage in torture and murder with impunity, constitutes in and of itself a violation of the duty to prevent violations of the rights to

<sup>69</sup> Inter-American Court, *Case of Ticona Estrada Vs. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008*, Series C No. 191, para. 56.

<sup>70</sup> IACHR, Report No. 101/01, Case 10247, Extrajudicial Executions, Forced Disappearances of Persons, Peru, October 11, 2001, para. 178, available at [www.IACHR.oas.org/annualrep/2001sp/Peru10247.htm](http://www.IACHR.oas.org/annualrep/2001sp/Peru10247.htm); any Inter-American Court., *Case of Tiu Tojin Vs. Guatemala. Merits, Reparations and Costs. Judgment of November 26, 2008*. Series C No. 190, and *Case of Ticona Estrada Vs. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008*. Series C No. 191.

<sup>71</sup> Inter-American Court, *Case of Radilla Pacheco Vs. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 138.

<sup>72</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 de September de 2009. Series C No. 202, paras. 51-103; *Case of Radilla Pacheco Vs. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009, Series C No. 209, paras. 138-59.

<sup>73</sup> CIDH. Report 93/08. Case 12.529. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Peru. October 31, 008, para. 278

<sup>74</sup> CIDH. Report 93/08. Case 12.529. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Peru. October 31, 008, para. 277

<sup>75</sup> CIDH. Report 93/08. Case 12.529. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Peru. October 31, 008, para. 277

<sup>76</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90.<sup>76</sup>

humane treatment and to life, even on the assumption that they are unable to demonstrate the acts of torture or deprivation of life of the person in the case in point.<sup>77</sup>

90. As regards the right to humane treatment specifically, the Inter-American Court of Human Rights has acknowledged that the forced disappearance of persons is a violation of that right, since “the sole fact of prolonged isolation and forced noncommunication represents cruel and inhumane treatment [...] in violation of paragraphs 1 and 2 of that article.”<sup>78</sup> The Court has specifically established that it is clear that all aspects of the integrity of victims of this practice have been violated.<sup>79</sup>

91. With specific regard to the right to life, in accordance with the Court’s case law, the practice of disappearances has frequently entailed execution of the detainees in secrecy, without a trial, followed by the hiding of the body to remove any material trace of the crime and to ensure absolute impunity, which represents a brutal violation of the right to life, recognized in Article 4 of the Convention.<sup>80</sup> This violation also results from the extreme risk to the life of victims implied by forced disappearance.

92. Similarly, in cases of forced disappearance of persons, the Court has stated that it is not necessary to conduct a detailed analysis of detention in relation to each of the guarantees established in Article 7 of the American Convention. This is so because when it is proven that deprivation of liberty is a prior step to disappearance, it is then unnecessary to determine whether the victims were informed of the reasons for their detention, if it occurred outside of the reasons and conditions established in legislation in force at the time of the events, or whether the act of detention was unreasonable, unforeseeable, or lacking in proportionality.<sup>81</sup> This is true because upon analyzing a presumed forced disappearance, account must be taken of the fact that deprivation of liberty is only the beginning of the conduct involving a complex violation prolonged over time until the fate and whereabouts of the victim are established.<sup>82</sup>

## 2. Analysis of the present case

93. In view of the foregoing, in this section the Commission will examine whether the case of Walter Munárriz Escobar contains the elements comprising forced disappearance of persons, in the following order: i) Deprivation of liberty and the participation of state agents; and ii) Denial of deprivation of liberty or refusal to provide information on [the victim’s] fate or whereabouts.

### 2.1 Deprivation of liberty and the participation of state agents

94. In the case at issue, there is no dispute regarding the fact that on March 20, 1999 Walter Munárriz Escobar was arrested at “Los Manolos” Hotel by police personnel and taken to the Lircay police station, where he was deprived of liberty. Thus the first element of forced disappearance has been met.

<sup>77</sup> See: Inter-American Court. *Case of Velásquez Rodríguez Vs. Honduras*, supra note 24, para. 175; *Case of Ticona Estrada vs. Bolivia*, supra nota 23, para. 59, and *Case of Anzualdo Castro Vs. Peru*, supra note 44, para. 85.

<sup>78</sup> Inter-American Court. *Case of Velásquez Rodríguez Vs. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras. 156 and 187; *Case of del Penal Miguel Castro Castro*. Merits, Reparations and Costs. Judgment of 25 November, 2006. Series C No. 160, para. 323; Inter-American Court. *Case of Ticona Estrada et al Vs. Bolivia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58.

<sup>79</sup> Inter-American Court. *Case of Ticona Estrada et al Vs. Bolivia*. Merits, Reparations and Costs. Judgment of 27 November, 2008. Series C No. 191, para. 58.

<sup>80</sup> Inter-American Court, *Case of 19 Comerciantes Vs. Colombia*. Judgment of July 5, 2004. Series C No. 109, para. 154; *Case of Bámaca Velásquez Vs Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 130.

<sup>81</sup> Inter-American Court. *Case of La Cantuta Vs. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 109.

<sup>82</sup> Inter-American Court. *Case of Ticona Estrada et al Vs. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 56.

95. The dispute between the parties has to do with whether Walter Munárriz Escobar remained at the police station and subsequently disappeared at the hands of state agents, or whether the official version of his release has been proven.

96. In the case of *Osorio Rivera et al vs. Peru*, the Inter-American Court analyzed a forced disappearance in which the State agreed on the arrest, but argued that the victim had been released, and therefore his disappearance cannot be attributed to it. On this allegation, the Court stated that “both in Peru and in other countries where there have been forced disappearances, there is information to the effect that the authorities make a practice of reporting that the person alleged to have disappeared had been released, in order to hide the true fate or whereabouts of the person who was detained.”<sup>83</sup>

97. The Commission emphasizes that, on taking Walter Munárriz Escobar into custody, the State acquired a special obligation to guarantee his rights, and an obligation to conduct a thorough investigation into his disappearance, with a view to providing a satisfactory explanation of what happened. In this context, the State is responsible for demonstrating the truth of its statement on the alleged release with sufficient evidence to impair or refute the allegation of involvement of state agents in the disappearance, and its ensuing responsibility.

98. On this point, the Commission notes that, in the first place, there is no documentary evidence in support of that release. The State, the very police officers involved, and the disciplinary authority that penalized them all agree that there is no record at the Lircay police station that shows that Walter Munárriz Escobar was released.

99. In the second place, the Commission notes that the only evidence adduced by the State is related to the statement of two persons, Lucinda Ponce and Juan Martin Silva, who related that they had seen Walter Munárriz Escobar early in the morning of March 20, 1999 in the vicinity of the Lircay police station. With regard to this evidence, the Commission takes into account that as established in the proven facts, both the Huancavelica Joint Superior Court and the Office of the People’s Defender undermined the credibility of the accounts of these two persons when they stated that their testimony was not consistent and contained contradictions; it was particularly impaired when judicial inspections demonstrated that it was physically impossible for them to have recognized Walter Munárriz Escobar from the distance at which the alleged witnesses were located.

100. This testimony also lost credibility due to the fact that no other person had seen the young man. In addition to the determinations of the domestic authorities regarding the testimony in question, the Commission underlines that according to the established facts, one of the persons who claimed to have seen Walter Munárriz Escobar (Lucinda Ponce) told one of the persons detained at the police station (Mr. Sierra Tueros) that she had been “told” to say that she saw a young man with long hair walking in the area.

101. In the third place, in addition to the lack of documentary evidence of the release and to the lack of credibility of the testimony of Mrs. Ponce and Mr. Silva, the Commission has found many circumstantial elements that are consistent with the participation of state agents in the disappearance of Walter Munárriz Escobar.

102. Here, the Commission points out that the State acknowledged the noncompliance with police regulations and protocols throughout the operations of state agents involving Walter Munárriz Escobar, including their absolute failure to record and officially document his arrest, transfer, and admittance to the Lircay police station.

103. Moreover, the Commission notes that in the arrest, transfer, and admittance to the Lircay police station, the State failed to observe all of the guarantees established in Article 7 of the American Convention.

---

<sup>83</sup> Inter-American Court. Case of Osorio Rivera and family Vs. Peru. Interpretation of the Judgment. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 290. Para. 137.

Although, as indicated earlier, in a case of alleged forced disappearance, there can be any kind of deprivation of freedom without it being necessary to demonstrate noncompliance with these guarantees; however, in the present case, said noncompliance is so patent that it constitutes an additional indication that the action of the state agents was designed not to leave a written record of the situation of Walter Munárriz Escobar.

104. Along the same lines, the Commission points out that there are various indications to support the conclusion that at different times, there was pressure on witnesses to make certain statements favoring the police version, as well as possible threats to squash the testimony of witnesses who were detained with Walter Munárriz Escobar. This point will be analyzed later on when considering the acts of complicity. In this section, the IACHR will confine its comments to noting that these elements constitute additional circumstantial evidence of the participation of state agents.

105. Furthermore, the Commission draws attention to the information on the abusive treatment inflicted on Walter Munárriz Escobar while he was deprived of liberty at the Lircay police station. Although, in accordance with the standards described for cases of forced disappearance, there is no need to demonstrate the existence of specific acts of torture or abuse to determine violations of the right to humane treatment, in the present case there are elements that point to the fact that Walter Munárriz Escobar was in fact the victim of abuse, an additional piece of circumstantial evidence that undermines the State's claim that he was released.

106. In this regard, Marcos Leónidas Sierra Tueros gave a statement to the representative of the People's Defender, according to which:

[...] early in the morning of 3/20/99, he heard a guy screaming as if he was being beaten, explaining that the person in question was crying to them to stop hitting him; that the screams and cries could be heard for twenty to thirty minutes [...]<sup>84</sup>

107. Furthermore, in his statement to the Huancavelica Superior Prosecutor's Office, he stated that he recognized the voices of the police officers who were beating Walter Munárriz Escobar, and he told them that:

Talk you c... why did you come into the room, for approximately half an hour, and after that there was silence as if they had fallen asleep, and then it sounded like something was being dragged, and after that nothing else could be heard.<sup>85</sup>

108. Although, Mr. Marcos Leónidas Sierra Tueros subsequently changed his statement to the Prosecutor, there is also the statement that he made to the Office of the People's Defender, in which he said that "he was coerced into stating in the Prosecutor's Office that nothing unusual had occurred on the day of the events in question."<sup>86</sup> As will be indicated later in this report, the reasons for that retraction were not duly investigated by the State, in order to clarify if they had to do with some form of pressure or threats from state agents.

109. On this point, the mother of Walter Munárriz Escobar had the following to say:

[...] afterwards the wife of Mr. Sierra Tueros came and told me, he says that your son was badly abused, that even the wall resounded as if they were bashing his head against it, and your son was screaming and they swore at him for going in [the room], and he says that all of a sudden everything was quiet and shortly after that, a car started up [...].<sup>87</sup>

<sup>84</sup> Annex 36. Record of Inspection Visit of March 31, 1999. Office of the People's Defender, Annex to the initial petition.

<sup>85</sup> Annex 21. Statement of Charges [*Dictamen Acusatorio*] 010-2000, Huancavelica Joint Superior Prosecutor's Office, June 1, 2000. Annex to the initial petition.

<sup>86</sup> Annex 37. Record of the inspection visit of the Office of the People's Defender - 361/03/99. Annex to the initial petition.

<sup>87</sup> Annex 38. Record of the continuation of the hearing, twenty-second edition. Annex to the initial petition.

110. Added to the foregoing is the information in the report of the Office of the People's Defender on Mr. Donayres, who was also detained at the police station on the day of the events, and who had approached the driver of that office to tell him that he wanted to give information about the cries and moaning he heard at the police station, but that he did not feel safe.

111. Based on the above-mentioned information, the Office of the People's Defender concluded that:

During the detention of Walter Munárriz Escobar, he was subjected to physical and verbal abuse by police personnel [...].<sup>88</sup>

112. By the virtue of the foregoing considerations, the Commission sums up: that there is no documentary evidence of any kind of the release; that the testimonies submitted by the State and which constitute the only evidence of the alleged release of Walter Munárriz Escobar do not meet the minimum standards of credibility; that there are many circumstantial elements which, taken together, demonstrate that in general, the actions of the police involved with Walter Munárriz Escobar were irregular and arbitrary; and, that there are statements that indicate specific abuse suffered by him while in the custody of the State. Based on these grounds, the Peruvian State failed to prove the release of Walter Munárriz Escobar, and therefore it was unable to refute the participation of state agents in his disappearance.

113. Thus the Commission concludes that the first element comprising forced disappearance, namely, deprivation of liberty and the participation of state agents, has been satisfied.

## **2.2 Denial of deprivation of freedom and refusal to provide information on the fate or whereabouts [of the victim]**

114. Having established deprivation of freedom and its continuation at the hands of state agents, the Commission notes that police officials made use of various mechanisms to cover it up.

115. In the first place, there is the fact that the officers present at the Lircay police station did not record the detention of Walter Munárriz Escobar in the books of common street incidents or in the record of detainees at that station. Due to failure to comply with police protocol on record-keeping, a disciplinary proceeding was initiated and concluded with the reprimand of all of the officers involved in the events, as established in the section on proven facts.

116. In the second place, Mrs. Gladys Escobar Candiotti, the mother of Walter Munárriz Escobar, stated that on the same day, March 20, 1999, she went to the Lircay police station to ask about her son, and was told when she arrived that he was not there. The next day, Mrs. Escobar went to the Lircay Provincial Prosecutor's Office, to file a complaint regarding the disappearance of her son. The petitioners indicated consistently that the Prosecutor refused to receive her complaint and asked her to come back in 60 days, and acted incredulous when she heard what Mrs. Escobar came to report. Mrs. Escobar returned on three occasions to that Prosecutor's Office and each time met with the same refusal. The State did not challenge this fact, which is consistent with the removal of that prosecutor from the investigation and with the conclusions of the Office of the People's Defender regarding the prosecutor's lack of diligence and impartiality, aspects that will be analyzed later on. The refusals of the Lircay Provincial Prosecutor prevented the relevant investigations from being initiated immediately.

117. In the third place the IACHR underlines that, in the expanded charges presented on June 22, 1999, the Superior Prosecutor stated that:

After studying the court documents, it is evident that, when the accused, Adolfo Edgar Angeles Ramos, gave his statement at the pretrial hearing, he stated that when Walter Munárriz Escobar was brought to the Lircay police station, PNP noncommissioned officer

<sup>88</sup> Annex 33. Report No. 024-99-RDP/HVA, 22 April 1999. Annex to the initial petition..

Gunther Cuaresma Ramos was on duty at the time as the reports and assistance officer, but that he did not prepare any documents, and that the documents were prepared on the following day at the order of his superior, when the present events under investigation were already known [...]; this leads one to presume that he only did so for the purpose of covering up his participation or responsibility in the present case.<sup>89</sup>

118. In the fourth place, on this point, it is also relevant to point out by way of additional complicity, evidence of various types of pressure or threats arising from certain statements. These include the statement by Mr. Sierra Tueros of having been pressured and later retracting his statement, the declaration by Mr. Donayres that he was afraid to give testimony to the Office of the People's Defender, and the statement of Mrs. Ponce that she had been told to testify that she had seen Walter Munárriz Escobar.

119. By virtue of the foregoing, the Commission considers that it is a proven fact that the State authorities denied that Walter Munárriz Escobar continued to be held in custody and that they refrained from providing information as to his fate or whereabouts.

### **2.3 Conclusion on the existence of forced disappearance**

120. On the grounds of the foregoing, the Commission concludes that the State has not offered a satisfactory explanation of what happened to Walter Munárriz Escobar, who was last seen alive when he was at the Lircay police station, and therefore its responsibility has not been refuted. The Commission concludes that Walter Munárriz Escobar was forcefully disappeared since, according to the analysis, the elements comprising said serious human rights violation were present. Hence the Commission concludes that the Peruvian State violated, and continues to violate, the right to recognition as a person before the law, and the rights to life, humane treatment, and personal liberty, as established in Articles 3.1, 4.1, 5.1, and 7.1, 7.2, 7.3, 7.4 and 7.5 of the American Convention, to the detriment of Walter Munárriz Escobar, all of which are considered in conjunction with the obligations established in Article 1.1 of that instrument. The Commission further concludes that the State violated Article 1.a) of the Inter-American Convention on the Forced Disappearance of Persons<sup>90</sup> and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

### **B. Right to a fair trial and to judicial protection (Articles 8.1 and 25.1 of the American Convention), considered in relation to the obligation to respect human rights (Article 1.1 of that instrument) and the obligation to adopt provisions within their legal jurisdiction, Article 1.b of the Inter-American Convention on the Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture**

121. The Articles of the American Convention referred to in the heading above state as follows:

#### Article 8.1 Right to a Fair Trial

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

#### Article 25.1. Judicial Protection

<sup>89</sup> Annex 39. Addendum of the charges presented by the Angaraes-Lircay Joint Provincial Prosecutor's Office to the Angaraes Joint Court on June 22, 1999. Annex to the State's memorandum No. 7-5-M/066 of February 9, 2006.

<sup>90</sup> With regard to the Inter-American Convention on the Forced Disappearance of Persons, the Commission notes that the Peruvian State deposited its instrument of ratification on February 13, 2002. Therefore, in view of the aforesaid characteristics of the crime of forced disappearance of persons, the State is responsible for violation of the rights established in that Convention, as of the date of ratification of that treaty and with regard to those cases of forced disappearance that still persist in time.

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

122. Article 1.b of the Inter-American Convention on the Forced Disappearance of Persons establishes that the States Parties to that Convention shall undertake “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.”

123. In addition to Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture cited above, Article 8 of that instrument establishes that:

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 the 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.

## 1. General considerations on the duty to investigate in cases of forced disappearance

124. According to inter-American case law, whenever there is a complaint of the disappearance of a person, there is critical link between the response of the state and protection of the life and integrity of the persons reported as disappeared. The Commission reiterates that “whenever there are reasonable grounds to suspect that a person is the victim of disappearance, it is crucial for the prosecutorial and judicial authorities to act promptly and immediately by ordering the timely and necessary measures to determine the whereabouts of the victim and the place where he may be found deprived of his freedom.”<sup>91</sup>

125. The Court has held that “by virtue of the protection granted by Articles 8 and 25 of the Convention, states are required to offer effective judicial remedies to the victims of human rights violations, that must be substantiated in accordance with the rules of due legal process.”<sup>92</sup> The Court has further stated that:

Article 8 of the Convention implies that victims of human rights violations or their family members must have ample opportunities to be heard and to participate in the proceedings in

<sup>91</sup> Inter-American Court. *Case of Anzualdo Castro Vs. Peru*. Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134; *Case of Radilla Pacheco Vs. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221, *Case of Ibsen Cárdenas e Ibsen Peña Vs. Bolivia*. Merits, Reparations, and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See also *the matter of Natera Balboa*. Provisional Measures with respect to Venezuela. Decision of the Court of February 1, 2010, thirteen preambular, and *the matter of Guerrero Larez*. Provisional Measures with respect to Venezuela. Court Decision of August 29, 2013, Sixth preambular..

<sup>92</sup> Inter-American Court, *Case of Cantoral Huamani y García Santa Cruz*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 10 July 2007. Series C No. 167. Para. 124; Inter-American Court, *Case of the Massacre of la Rochela*. Judgment of 11 May 2007. Series C. No. 163. Para. 145; Inter-American Court, *Case of del Penal Miguel Castro Castro*. Judgment of 25 November 2006. Series C No. 160. Para. 381; and Inter-American Court, *Case of Trabajadores Cesados del Congreso (Aguado Alfaro et al)*. Judgment of 24 November 2006. Series C No. 158, Para. 106.

question, both to attempt to clarify the facts and to punish the perpetrators, as well as to seek appropriate reparations.<sup>93</sup>

126. As the IACHR has indicated, the State has the obligation to ensure that “every action by the State as part of the investigative process, as well as the entire investigation, must be directed towards a specific purpose, determination of the truth and the investigation, pursuit, capture, prosecution, and possible punishment of all persons responsible for said acts.”<sup>94</sup>

127. Thus the Court has found that once the state authorities have knowledge of the event in question, the obligation to investigate entails ex officio opening without delay of a serious, impartial, and effective investigation, using all available legal means, directed to determining the truth and to pursuing, capturing, prosecuting, and eventually punishing all the persons responsible for the acts in question,<sup>95</sup> especially whenever they involve or may have involved state agents.<sup>96</sup> This duty is an obligation of means and not of results, and it must be taken on by the State as its own legal duty, and not merely as a formality condemned to fail in advance, or as a mere response to specific interests, that relies on the initiative of the victims or their families or on private contributions of pieces of evidence.<sup>97</sup> The State’s obligation to investigate must be carried out diligently, to prevent impunity and the repetition of such acts.<sup>98</sup>

128. The Inter-American Court has established that in order for a legal recourse to be effective, it is not enough that it is stipulated in the Constitution or the law, or that it is officially admissible, but it must actually be capable of establishing whether a human rights violation has been incurred and of providing the necessary means to remedy it.<sup>99</sup>

129. From the foregoing, it is evident that if one of the objectives of forced disappearance is to prevent legal remedies and the relevant procedural guarantees from being exercised, when persons are subject to detention, retention, or any form of deprivation of liberty for the purpose of causing their forced disappearance and the victims themselves cannot gain access to the available remedies, it is essential that family members or other alleged persons can have access to prompt and effective judicial remedies or proceedings as a way of determining their whereabouts or the status of their health or to identify the authority who ordered the deprivation of liberty or implemented it.<sup>100</sup>

<sup>93</sup> Inter-American Court, *Case of García Prieto et al.* Preliminary Objections, Merits, Reparations and Costs. Judgment of 20 de November de 2007. Series C No. 168. Para. 102; Inter-American Court, *Case of the “Street Children,” (Villagrán Morales et al.)*. Judgment of 19 de November de 1999. Series C No. 63. Para. 227; and Inter-American Court, *Case of the Serrano Cruz Sisters. Merits, Reparations, and Costs.* Judgment of 01 March 2005. Series C No. 120, Para. 63.

<sup>94</sup> IACHR, Report No. 85/13, Case 12251, Admissibility and Merits, Vereda la Esperanza, Colombia, 4 de November de 2013, para. 242. Inter-American Court, *Case of Kawas Fernández Vs. Honduras.* Merits, Reparations and Costs. Judgment of 3 April 2009 Series C No. 196, para. 101.

<sup>95</sup> Inter-American Court. *Case of Velásquez Rodríguez. Vs. Honduras.* Merits. Judgment of 29 July 1988. Series C No. 1, para. 177; and *Case of Veliz Franco et al Vs. Guatemala.* Preliminary Objections, Merits, Reparations and Costs. Judgment of 19 de mayo de 2014. Series C No. 277, para. 183.

<sup>96</sup> Inter-American Court. *Case of Myrna Mack Chan Vs. Guatemala.* Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) Vs. Colombia.* Preliminary Objections, Merits, Reparations and Costs. Judgment of 20 November 2013. Series C No. 270, para. 371.

<sup>97</sup> Inter-American Court. *Case of Velásquez Rodríguez Vs. Honduras.* Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; and, *Case of Veliz Franco et al Vs. Guatemala.* Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para.183.

<sup>98</sup> Inter-American Court. *Case of Ituango Massacres Vs. Colombia.* Judgment of 1 July 2006, Series C. No. 148, para. 319; *Case of Veliz Franco et al Vs. Guatemala.* Preliminary Objections, Merits, Reparations and Costs. Judgment of 19 de mayo de 2014. Series C No. 277, para. 183; y *Case of Hermanos Landaeta Mejías et al Vs. Venezuela.* Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014, Series C No. 281, para., 216.

<sup>99</sup> Inter-American Court. *Case of Yakye Axa Indigenous Community.* Judgment of 17 June 2005. Series C No. 125, para. 61; *Case of “Cinco Pensionistas”.* Judgment of 28 de febrero de 2003. Series C No. 98, para. 136, y *Case of Mayagna (Sumo) Awas Tingni Community,* Judgment of 31 August 2001. Series C No. 79, para. 113.

<sup>100</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru.* Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 de September de 2009. Series C No. 202, para. 64.

130. A person who is in detention, in conditions of illegality and arbitrariness, is in a situation of exceptional risk. For this reason, the initial actions in the investigation of a reported forced disappearance are especially relevant to safeguard the life and personal integrity of the victim.

131. The Court has established the State's duty to investigate as long as there is uncertainty as to the fate of the disappeared person and the need to offer a simple and prompt remedy to the case, with the guarantees of due process.<sup>101</sup> The Commission recalls that States have the duty to guarantee the right to truth to victims and their families through investigation and prosecution of the crime, as stipulated in Articles 8 and 25 of the Convention.<sup>102</sup>

132. Finally, as regards the right to know the truth, this has been recognized in various United Nations instruments and by the General Assembly of the Organization of American States.<sup>103</sup> The Inter-American Court has determined the content of the right to know the truth, specifically in cases of forced disappearance of persons. In the case of *Velásquez Rodríguez vs. Honduras*, the Court asserted the existence of a "right of members of the victim's family to know that victim's fate and, if applicable, where his remains can be found."<sup>104</sup> In this type of cases, it is understood that the families of the disappeared person are victims of the acts comprising forced disappearance of persons, which gives them the right to have the acts investigated and the responsible parties prosecuted and, if appropriate, punished.<sup>105</sup> The Court has recognized that the right of families of victims of serious human rights violations to know the truth is part of the right to access to justice.<sup>106</sup>

133. Along the same lines, the Court has held that:

The right to know the truth represents a necessary effect for it is important that a democratic society knows the truth about acts involving serious human rights violations. This is a fair expectation that the State is required to satisfy, on the one hand by means of the obligation to investigate human rights violations, and on the other hand, by the public dissemination of the results of the criminal and investigative procedures. The right to know the truth requires of the State the procedural determination of the patterns of joint actions and of all those who participated in different ways in said violations, and their corresponding responsibilities. Moreover, in compliance with the obligation to guarantee the right to know the truth, States may establish Truth Commissions, which can contribute to building and safeguarding historical memory, to clarifying events, and to determining institutional, social, and political responsibilities at certain times in a society's history.<sup>107</sup>

<sup>101</sup> Inter-American Court., *Case of Bámaca Velásquez Vs. Guatemala*. Merits. Judgment of 25 de November de 2000. Series C No. 70, para. 197.

<sup>102</sup> Inter-American Court., *Case of de la Masacre de la Rochela Vs. Colombia*. Merits, Reparations and Costs. Judgment of 11 de mayo de 2007. Series C No. 163, para. 147.

<sup>103</sup> Series of Principles for the Protection and Promotion of Human Rights by Fighting Impunity (E/CN.4/2005/102/Add.1). Report on updating the series of principles for the protection and promotion of human rights by fighting impunity, by Professor Diane Orentlicher (E/CN.4/2005/102, of 18 February 2005). Study on the Right to Truth. Report of the United Nations Office of the High Commissioner for Human Rights (E/CN.4/2006/91 of 9 January 2006). OAS General Assembly, Resolutions on the Right to Life: AG/RES. 2175 (XXXVI-O/06), AG/RES. 2267 (XXXVIII/07) and AG/RES. 2406 (XXXVIII-O/08).

<sup>104</sup> Inter-American Court, *Case of Velásquez Rodríguez Vs. Honduras*. Merits. Judgment of 29 July 1988. Series C. No. 4, para. 181.

<sup>105</sup> Inter-American Court, *Case of Blake Vs. Guatemala*. Merits. Judgment of 24 January 1998. Series C No. 36, para. 97.

<sup>106</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 September 2009, Series C No. 202, para. 118.

<sup>107</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 September 2009, Series C No. 202, para. 119.

## 2. Analysis of whether the State complied with its obligation to investigate with due diligence and in a reasonable period of time.

134. The Commission considers that, in cases such as this one, it is the duty of the State to demonstrate that its authorities complied with their obligations under the American Convention and the Inter-American Convention on the Forced Disappearance of Persons from the time they were in force in the State in question. Specifically it is the duty of States to demonstrate that its authorities proceeded diligently with investigations, once they were informed of a disappearance. Moreover, in view of the fact that there is sufficient evidence to activate the duty to investigate possible acts of torture in the context of the disappearance of a victim, the Commission also deems it relevant to invoke the obligations to investigate under the Inter-American Convention to Prevent and Punish Torture.

135. The Commission notes that, upon learning of the disappearance reported, the authorities did not take specific and immediate action to learn of the whereabouts of Walter Munárriz Escobar and to protect his life and integrity, especially when he disappeared after having been detained by State agents. The very day of the events, Mrs. Gladys Escobar Candiotti appeared in person at the Lircay police station where she inquired about her son and reported his disappearance.<sup>108</sup> The following day, she attempted to file a complaint regarding the disappearance of her son with the Lircay Provincial Prosecutor's Office; there is sufficient evidence that the Prosecutor there refused to accept her complaint and asked her to return two months later.

136. From available information, it is clear that said Prosecutor, who should have expedited the initial investigations, was clearly biased in favor of the police officers involved. Thus not only did she refuse to accept the complaint, while indicating her incredulity to the mother of the victim, and telling her that they were not living in a time of terrorism, but also, in official documents related to the investigation, she specifically stated that the purpose of the investigation was to demonstrate the lack of responsibility of the police officers, to protect the "good reputation" of the institution.

137. Based on the foregoing, the Commission considers that the initial investigations were carried out by an authority without even minimal guarantees of impartiality.

138. Moreover, this lack of impartiality was clearly reflected in the superficial way in which the investigations were conducted, with regard to both the search for Walter Munárriz Escobar and clarification of the responsibilities.

139. The initial lack of due diligence was pointed out in the undated preliminary report of the Office of the People's Defender, in which specific reference was made to the failure to take critical evidence. On this point, it concluded:

"The investigation conducted by the representative from the Office of the Prosecutor moved slowly, and was confined to taking statements, without any other steps being undertaken so as to fully clarify the events under investigation; neither did it coordinate with other entities in a search for the disappeared person. The magistrate (sic) in question found the statements made by the implicated police officers as absolutely credible...<sup>109</sup>

140. The Commission points out that in cases of forced disappearance of persons, the initial investigative proceedings are crucial and can be a determining factor in the actual prospect of clarifying the whereabouts of the disappeared person, and in determining the possible responsible parties. Thus the failure of due diligence in the initial stages of the investigation into the forced disappearance of a person has a particularly negative impact on the entire investigation.

<sup>108</sup> Annex 40. In the statement given at the pretrial hearing by, Adolfo Edgar Ángeles Ramos, it states that: "he learned of the disappearance of Walter Munárriz Escobar on the same day, in the morning when he approached the victim's mother and sisters, who told him that he had been detained." Annex to the State's Memorandum N° 7-5-M/066 of 9 February 2006.

<sup>109</sup> Annex 5. Preliminary report of the People's Defender. Annex to the initial petition.

141. From the investigation conducted later on, the Commission does not have information that would enable it to conclude that the State duly corrected these initial failings. Moreover, there is evidence indicating that they might not have exhausted lines of investigation. For instance, there is no record that the officials in charge of the investigation thoroughly investigated the different indications of pressure and threats by the police officers referred to throughout this report on the merits. Nor is there a record that they exhausted a line of investigation into the presumed unusual activities of some of the police officers involved on the day of the disappearance of Walter Munárriz Escobar. By the same token, there was never an in-depth investigation into the evidence of abuse suffered by the victim at the Lircay police station.

142. In summary, the Commission finds that in the judgment of February 15, 2001, the Huancavelica Joint Chamber of the Superior Court of Justice, two police officers were convicted as responsible for the crime against humanity in the form of forced disappearance, to the detriment of Walter Munárriz Escobar. Moreover, the Commission notes that on December 13, 2001, the Supreme Criminal Chamber vacated the judgment, and ordered a new oral proceeding. On May 25, 2004, the Joint Chamber of the Huancavelica Superior Court of Justice acquitted all of the defendants, on the grounds of “having proven the disappearance of the injured party, Walter Munárriz Escobar, but not the responsibility of the defendants [...]” The same Chamber decided to provisionally close the case and continue with the investigations “into the whereabouts of the injured party, and into the persons responsible for the forced disappearance.”

143. From the foregoing, the Commission considers that the conclusions reached by the domestic authorities were not the result of a serious, diligent, and thorough investigation, in accordance with the State’s obligation under the American Convention, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture. In this regard, the acquittal of the responsible parties does not prevent the State from initiating an investigation in accordance with its obligations to clarify events and establish the responsible parties, an act that would not contravene the principle of *ne bis in idem*. This is consistent with the recommendations made in the final part of this report.

144. The Commission further notes that, since October 20, 2004, the date on which other legal remedies were resolved and the judgment of May 25, of that year was upheld, the State has neither moved forward with investigations nor made headway in clarifying the facts. Neither has the State submitted information that would show that it was following other lines of investigation or that there was a plan for discovering the fate or whereabouts of the victim.

145. On the date of the approval of this report, over 17 years have lapsed since the beginning of execution of the forced disappearance of Walter Munárriz Escobar, and said disappearance has yet to be clarified, while the State has not presented any explanation to justify the absence of new proceedings. Here, the Commission considers that the State has incurred an excessive delay in the investigations that is not justified by the complexity of the matter, but rather is due to the lack of incentive and diligence on the part of the State.

146. By virtue of these considerations, the Commission concludes that the State of Peru has not implemented the necessary measures to fulfill its obligation to investigate, prosecute, and punish, within a reasonable period of time, and with due diligence, the persons responsible for the human rights violations analyzed in this report. Consequently, the Commission concludes that the State of Peru is responsible for violation of the rights to a fair trial and to judicial protection established in Articles 8 and 25 of the American Convention, considered in conjunction with the obligations established in Article 1.1 of that instrument, to the detriment of Walter Munárriz Escobar and his family members. The State of Peru is also held responsible for violation of Article 1.b) of the Inter-American Convention on the Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

**C. Obligation to adopt provisions of domestic law related to the classification of the crime of forced disappearance of persons (Article 2 of the American Convention and III of the Inter-American Convention on the Forced Disappearance of Persons)**

147. Article 2 of the American Convention states that:

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.

148. Article III of the CISDFP establishes the following

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.

The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

149. In the judgment of the Inter-American Court in the case of *Gómez Palomino vs. Peru* of November 22, 2005, that tribunal concluded that the classification of the crime of forced disappearance referred to in Article 320 of the Peruvian Penal Code did not meet inter-American standards on the subject, and so ordered that it be amended to conform to the definition contained in Article III of the CISDFP.<sup>110</sup> That provision of the Peruvian Penal Code establishes the following:

The official or public servant who deprives a person of his freedom, ordering or executing actions that result in that person's duly proven disappearance, shall be reprimanded by a sentence of deprivation of freedom of no less than fifteen years and professional disqualification, in accordance with Article 36, subparagraphs 1) and 2).<sup>111</sup>

150. In the case of *Gómez Palomino*, the Inter-American Court concluded that the definition contained in the referenced law "restricts the perpetrators of forced disappearance to government officials or public servants" and that it "does not contain all the types of criminal participation included in Article II of the CISDFP, thus being incomplete." Moreover, the Inter-American Court underlined that Article 32 of the Peruvian Penal Code does not include denial to acknowledge detention and to reveal the fate or whereabouts of the detainee as elements of the crime of forced disappearance. Finally, the Court observed that "Article 320 of the Penal Code [...] refers to the fact that disappearance must be "duly proven," which presents serious difficulties in its interpretation."<sup>112</sup>

151. With respect to the present case, the Commission notes that the Superior Coordinating Prosecutor of the National Criminal Superior Prosecution Office and the Supra-Provincial Criminal Prosecution Offices issued Report No. 004-2011-FSPNC-MP-FN of April 4, 2011, addressed to the Alternate Representative of the National Prosecution Office of the National Human Rights Council, stating that "the wording of Article 320 of

<sup>110</sup> Inter-American Court, *Case of Gómez Palomino Vs. Peru*, Judgment of 22 November 2005. Series C No. 136, para. 149 and operative item 12.

<sup>111</sup> See Law No. 26926 of 30 January 1998, Article 1º, available on the website of the Peruvian Congress: [www.congreso.gob.pe/ntley/imagenes/Leyes/26926.pdf](http://www.congreso.gob.pe/ntley/imagenes/Leyes/26926.pdf).

<sup>112</sup> Inter-American Court, *Case of Gómez Palomino Vs. Peru*, Judgment of 22 de November de 2005. Series C No. 136, paras. 100 to 108.

the Penal Code is not aligned with the classification of the crime of forced disappearance pursuant to the above-mentioned international law, since the crime in our domestic law is restrictive.”<sup>113</sup> In the same report, the Prosecutor stated that it is appropriate to propose an amendment to the legislation. In addition, he pointed out that the element of “duly proven disappearance” established in Article 320 of the Penal Code gives rise to judicial interpretations that could lead to impunity.<sup>114</sup>

152. In the case of Anzualdo Castro and, subsequently, in the case of Osorio Rivera, the Court emphasized that the text of Article 320 of the Peruvian Penal Code had not been amended, and concluded that “as long as [the article] is not correctly adapted to international standards, the State will continue to be in noncompliance with Articles 2 of the American Convention and III of the Inter-American Convention on the Forced Disappearance of Persons.”<sup>115</sup> In the same vein, in its resolution of July 5, 2011 on supervision of compliance with the judgment issued in the case of Gómez Palomino, the Inter-American Court indicated that “the State has not presented information on specific action taken to reform its criminal legislation according to the terms stated in the judgment.”<sup>116</sup>

153. Since, to date, the Peruvian State has not amended the criminal classification of forced disappearance as stipulated in Article 320 of its Penal Code, through the mechanisms provided in its legal system, the IACHR considers that it is still not in compliance with the obligation to adopt the necessary legislative measures, in accordance with Article 2 of the American Convention and III of the CIDFP.

#### **D. Right to humane treatment of members of the families of victims (Articles 5.1, in conjunction with 1.1 of the American Convention on Human Rights)**

154. The Commission and the have found in numerous cases that the family members of victims of human rights violations can in turn be victims as well.<sup>117</sup> More specifically, in cases involving the forced disappearance of persons, it is possible to understand that the violation of the right to physical and moral integrity of the family of a victim is a direct consequence of this phenomenon, and that forced disappearance generates severe suffering by the very fact that it is aggravated by the constant refusal of state authorities to provide information regarding the whereabouts of the victim or to open an effective investigation to shed light on what happened.<sup>118</sup> Thus the Court has come to consider the continuing deprivation of the truth regarding the fate of a disappeared person as a form of cruel and inhumane treatment for the close family members.<sup>119</sup>

155. In cases of a forced disappearance, the State has the obligation to guarantee the right to humane treatment of the families as well, through effective investigations. Furthermore, the absence of effective remedies has been considered by the Court as a source of suffering and additional anguish for victims and their families.<sup>120</sup> In the present case, as established in the section on proven facts, the members of the family

<sup>113</sup> Annex 1. Report N° 004-2011-FSPNC-MP-FN of 4 April 2011, including as an annex the State’s memorandum No. 7-5-M/785 of 5 December 2011.

<sup>114</sup> Annex 1. Report N° 004-2011-FSPNC-MP-FN of 4 April 2011, including as an annex the State’s memorandum No. 7-5-M/785 of 5 December 2011.

<sup>115</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*, Judgment of 22 September 2009, Series C No. 202, para. 167, and Inter-American Court, *Case of Osorio Rivera and family Vs. Peru*, Judgment of 26 November 2013, Series C No. 274, para. 212.

<sup>116</sup> Inter-American Court, Decision on supervision and compliance with judgment in the *Case of Gómez Palomino*, 5 July 2011, para. 37.

<sup>117</sup> Inter-American Court, *Case of Bámaca Velásquez Vs. Guatemala*. Merits. Judgment of 25 November 2000. Series C No. 70, para. 160.

<sup>118</sup> Inter-American Court, *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 September 2009. Series C No. 202, para. 105.

<sup>119</sup> Inter-American Court, *Case of Radilla Pacheco Vs. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 23 November 2009. Series C No. 209, para. 166.

<sup>120</sup> Inter-American Court., *Case of Anzualdo Castro Vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 22 de September de 2009. Series C No. 202, para. 113.

of Walter Munárriz Escobar took it on themselves to look for him, without obtaining a response from the authorities.

156. The Commission observes that, to date, the members of the family of Walter Munárriz Escobar do not know his fate or whereabouts, and have not received an adequate judicial response. The State did not provide the family of the victim with an effective judicial remedy that would establish the truth of the events, the punishment of the instigators and perpetrators of the crime, and the appropriate reparations.

157. The Commission considers that due to the nature of the events of the case, the situation of impunity, and the inevitable effects on the family nucleus of the victims, the State also violated the right to physical, mental and moral integrity set forth in Article 5.1 of the American Convention, considered in relation to the obligations established in Article 1.1 of that instrument, to the detriment of Walter Munárriz Escobar.

## **VI. CONCLUSIONS**

158. The Commission concludes that the State of Peru is responsible for violation of the rights to recognition as a person before the law, life, humane treatment, personal liberty, a fair trial, and judicial protection established in Articles 3, 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, and 25.1 of the American Convention, considered in relation to Article 1.1 and 2 of that instrument, to the detriment of Walter Munárriz Escobar. With respect to the members of the victim's family, the State is responsible for the violation of Articles 5.1, 8.1, and 25.1 of the American Convention, considered in conjunction with Articles 1.1 and 2 of that international instrument. The Commission further concludes that the State is responsible for violation of Articles I and III of the Inter-American Convention on the Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

## **VII. RECOMMENDATIONS**

159. Based on the analysis and conclusions of this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF PERU:**

1. To conduct a thorough, impartial, and effective investigation into the whereabouts of Walter Munárriz Escobar and, if applicable, adopt the necessary measures to identify and deliver his mortal remains to the members of his family.
2. To carry out domestic proceedings related to the human rights violations referred to in this report and to conduct the relevant proceedings for the crime of forced disappearance of Walter Munárriz Escobar, in an impartial and effective manner and within a reasonable period of time, with a view to fully clarifying the facts, and identifying all of the responsible parties and imposing the appropriate punishments.
3. To provide for adequate reparations for the human rights violations established in this report, covering both material and moral aspects, including fair compensation, establishment and dissemination of the historical truth of the events, and implementation of an adequate program of care for the members of the family of Walter Munárriz Escobar.
4. To adopt the necessary measures to prevent repetition, so that in the future similar events do not occur. More specifically, provide for the measures needed to strengthen the institutional capacity to investigate cases of forced disappearance of persons, including a thorough search for the whereabouts of the disappeared person, and to establish the responsible parties.
5. To acknowledge its responsibility for the forced disappearance of Walter Munárriz Escobar.

6. To reform its criminal legislation to bring the classification of the crime of forced disappearance of persons into line with inter-American standards.