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## **REPORT No. 169/19**

### **CASE 12.889**

REPORT ON MERITS

DIANA MAIDANIK ET AL.

URUGUAY

Approved by the Commission at its session No. 2160 held on November 9, 2019  
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## I. INTRODUCTION

1. On August 15, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition lodged by the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR), alleging the international responsibility of the Eastern Republic of Uruguay (hereinafter "the State," "the Uruguayan State," or "Uruguay") for the alleged forced disappearance of Luis Eduardo González González and Oscar Tassinó Asteazu, as well as the alleged extrajudicial executions of Diana Maidanik<sup>1</sup>, Laura Raggio Odizzio, and Silvia Reyes (hereinafter "the alleged victims") and for failure to investigate all those acts.

2. The Commission approved Report on Admissibility No. 90/12 on November 8, 2012.<sup>2</sup> On January 23, 2013, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement, to no avail, given the absence of the conditions needed to resolve the case through that procedure. The parties were afforded the regulatory time to present additional observations as to merits. All the information received was duly relayed between the parties.

## II. POSITIONS OF THE PARTIES

### A. Petitioner

3. The petitioner stated that between 1973 and 1985 the Eastern Republic of Uruguay was ruled by a civil-military dictatorship. It reported that it was during that period that the forced disappearances of Luis Eduardo González and Oscar Tassinó Asteazu were committed, as well as the extrajudicial executions of Diana Maidanik, Laura Raggio Odizzio, and Silvia Reyes.

4. Regarding Diana Maidanik, Laura Raggio Odizzio, and Silvia Reyes, the petitioner stated that on April 21, 1974, while all three women were sleeping in Silvia Reyes's apartment, they were extrajudicially executed by members of the Joint State Security Forces, who were looking for Silvia Reyes's husband. The petitioner pointed out that the press, at that time manipulated by the civil-military dictatorship, reported that the women had died in a confrontation. It added that on June 20, 1985, it had filed criminal charges with respect to all the acts committed.

5. As regards the forced disappearance of **Luis Eduardo González**, the petitioner indicated that on December 13, 1974, he and his wife were detained and taken to Cavalry Regiment No. 6. It reported that after several efforts to ascertain his whereabouts, on December 26, 1974, the First Army Division had issued a communique stating that Mr. González had fled during a reconnaissance procedure, as a result of which, in January 1975, the Army's Joint Forces had issued a summons for him to appear. The petitioner pointed out that the alleged victim was seen by his wife and other detainees in the regiment, in poor physical and mental state as a result of the tortures to which he had been subjected.

6. It stated that on July 2, 2003, the Peace Commission of the Office of the President of the Republic reported on the investigation carried out with regard to Mr. González, stating that after having been taken to Cavalry Regiment No. 6, he had been subjected to severe forms of torture and had subsequently died, on December 26,

<sup>1</sup> In its Admissibility Report No. 90/12, the IACHR referred to the alleged victim as "Diana Maidanik." Later on, however, the Parties referred to the alleged victim as Diana Maidanik.

<sup>2</sup> IACHR Report No. 90/12, Petition 1056-07, Admissibility, Diana Maidanik et al., Uruguay, November 8, 2012, par. 3. In that report, the IACHR declared the petition admissible with respect to the possible violation of the rights recognized in Articles I, IX, XVII, XVIII, and XXV of the American Declaration and Articles 3, 4, 5, 7, 8, and 25 in conjunction with Articles 1.1 and 2 of the American Convention, and Articles I, III, IV, V, and XI of the Inter-American Convention on the Forced Disappearance of Persons and 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, in respect of Oscar Tassinó Asteazu and Luis Eduardo González González; in Article I, IX, and XVII of the American Declaration with respect to Diana Maidanik, Laura Raggio Odizzio, and Silvia Reyes; and in Articles I and XVIII of the American Convention, Articles 5, 8, and 25, in conjunction with Articles 1.1 and 2 of the American Convention and Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons and 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the family members of the alleged victims; and inadmissible with regard to alleged violations of the rights upheld in Article 1.3 of the American Convention.

1974. It stated that his remains had been buried in Battalion 14 in Toledo, exhumed toward the end of 1984, burned and tossed into the River Plate (*Rio de la Plata*).

7. Regarding the forced disappearance of **Oscar Tassino Asteazu**, the petitioner stated that he had been detained on July 19, 1977, by persons identified as members of the Joint Forces, who beat him and dragged him out of his home. The petitioner reported that after his detention, someone being held in the clandestine "La Tablada" detention center claimed to have heard Mr. Tassino's voice there as he was being tortured. As for steps taken to ascertain his whereabouts, the alleged victim's wife stated that she had gone to the police, where an intelligence service captain told her that Mr. Tassino had been detained in January 1974 and released four days later. Since then, he had been subpoenaed to appear. The petitioner pointed out, that notwithstanding the above, there had been a series of subsequent communications in which the State reported that it knew nothing about the circumstances surrounding Mr. Tassino's detention or regarding his whereabouts.

8. The petitioner indicated that the Peace Commission reported that Mr. Tassino had been detained on a farm by military personnel on July 19, 1977 and taken to a clandestine detention center, where he had been tortured and had died as a result of a heavy blow. That Commission stated that his remains had been buried in Battalion 14 in Toledo, exhumed toward the end of 1984, burnt and tossed into the River Plate. The petitioner stressed that that information differs from the contents of a subsequent report of August 2005, in which an army commander states that Mr. Tassino had died on July 24, 1977, after committing suicide on his way to a restroom, when he was unaccompanied.

9. The petitioner added that on June 20, 1985, it had filed criminal charges with respect to all the acts committed. It mentioned that the Amnesty Law (Law 15.737) had been issued in 1985, followed by Law 15.848 in 1986 (Extinction of Legal Actions/Expiry of Punitive Claims of the State, or *Ley de Caducidad*). The petitioner states that the bodies responsible for investigating the instant case construed that the facts of the case were included in the amnesty granted by the *Ley de Caducidad* (hereinafter Expiry Law), and therefore shelved all charges. The petitioner argued that in response to that, in 1986 he had filed appeals for the Expiry Law to be declared unconstitutional. However, those appeals were dismissed in Judgment No. 184 of May 2, 1988.

10. The petitioner stated that in 2005 it had requested a reopening of the inquiries shelved as a result of the Expiry Law. It mentioned that in the case of **Luis Eduardo González**, despite an opinion in favor of reopening the investigations by the prosecutor responsible for keeping track of them, the magistrate in the case closed them, invoking the Expiry Law. Likewise, with respect to the cases of **Oscar Tassino**, **Diana Maidanik**, **Laura Raggio**, and **Silvia Reyes**, the prosecutor in charge asked for all proceedings to be shelved, as they were included within the scope of the same law.

11. Regarding matters of law, the petitioner claimed violation of the rights to **judicial guarantees and judicial protection**. It stated that the Expiry Law had prevented a judicial investigation to ascertain the truth of what had occurred and to punish those responsible. The petitioner also asserted that said law had turned into an obstacle to the alleged victims gaining access to a simple and effective remedy to protect their human rights. It argued that the law also violated the obligation to **adopt provisions under domestic law**.

## **B. State**

12. The State reported that what happened to **Luis Eduardo González**, **Oscar Tassino**, **Diana Maidanik**, **Laura Raggio**, and **Silvia Reyes** occurred during the military dictatorship of 1973 to 1985. It commented that light had been thrown on those facts by the Peace Commission set up to investigate what had happened to detainees who disappeared during the dictatorship. It stated that, as a result of a decision taken by the Executive Branch in December 2005, cases denounced by the Peace Commission are not included in the scope of Law 15,848.

13. Regarding the investigation into the forced disappearance of **Luis Eduardo González**, the State reported that it was currently being conducted by the 26th Criminal Court. It stated that on August 29, 2018, the Prosecutor's Office had asked for several evidentiary procedures that were still pending. The State indicated that on April 5, 2019, the Ministry of Defense had been asked to remit testimony from the proceedings before the Honor Tribunal in the Gavazzo and Silveira cases.

14. Concerning the forced disappearance of **Oscar Tassino**, the State indicated that it was being investigated by the 27th Criminal Court. It stated that on March 21, 2018, the Prosecutor's Office has asked for several evidentiary procedures that were still incomplete. It added that, on April 5, 2019, after it had become aware of the records of proceedings before the Honor Tribunal in the Gavazzo and Silveira, it had asked the Ministry of Defense to remit the testimony contained therein. According to the State, the investigation is at an advance stage, although the principal accused is a fugitive from justice.

15. As regards the deaths of **Diana Maidanik, Laura Raggio, and Silvia Reyes**, the State reported that the 28th Criminal Court was in charge of the investigation. The State underscored the importance of this case, which is tied to the disappearance of Washington Barrios, Silvia Reyes's husband, given that the Executive Branch had ruled Law 15.848 inapplicable, thereby establishing a new interpretation criterion, according to which judges had to investigate the facts relating to the disappeared detainees, instead of merely remitting the files in question to the Executive.

16. At the same time, as regards the Expiry Law, the State pointed out that, as of 2014, the Supreme Court of Justice had been dismissing unconstitutionality objections filed against Articles 2 and 3 of Law 18.831, commonly known as the Law Interpreting the Prescription Law, so that currently there was no legal impediment to investigating, prosecuting, and punishing crimes committed during the dictatorship.

17. As for the search for the alleged victims, the State reported that, as of 2015, new efforts had been undertaken to investigate what had happened to and the whereabouts of those who disappeared during the dictatorship, including inspections of such sites as military facilities used as detention and torture centers. The State mentioned that on August 27, 2019, the Uruguayan Forensic Archeology Investigation Group found remains of human bones of men or women in the precincts of what used to be Armored Infantry Battalion No. 13, in the course of routine work being carried out over the past few years in that Battalion: an indication of the national authorities' efforts to throw light on the lamentable acts that occurred during the dictatorship in Uruguay.

18. In addition, the State reported that the next-of-kin of the five victims had received reparation under Article 11.a of Law 18.596 and that their case files had been archived once they had collected the compensation awards.

19. The State likewise reported progress with a number of broader steps taken to overcome the impunity surrounding acts committed during the dictatorship. It said they included: 1. The passing of Law 18.596 acknowledging the illegitimacy of State acts between 1968 and 1973 and labeling as State terrorism the regime to which the Republic of Uruguay was subjected from 1978 to 1985; 2. The passing of law 18.831, reinstating the State's right to punish in all cases covered by Law 15.848 and characterizing crimes against humanity and their imprescriptibility (exclusion from any statute of limitations); 3. The establishment of the Truth and Justice Working Group through Executive Branch Decree No. 131/2015, to search for persons disappeared between June 13, 1968 and February 28, 1985; 4. The establishment of a team specializing in serious human rights violations in connection with the Internal Affairs Directorate of the Ministry of the Interior, which works together with justice system operators and the Office of the Attorney General; 5. The passing of Law 19.550, which empowered the Office of the Attorney General to transform a National Public Prosecutor's office into a Public Prosecutor's Office specializing in Crimes against Humanity: a change enacted in February 2019, prompting a revival of lawsuits; 6. The presentation of a bill in August 2019 providing that authority to search for persons missing in connection with the illegitimate acts of the State be vested in the National Institute of Human Rights and the Ombudsperson's Office.

20. Concerning matter of law, the State denied violating **judicial guarantee, judicial protection, or the duty to adopt provisions under domestic law**. The State argued that the new interpretation of the Prescription Law makes it possible to achieve a more rigorous selection of cases covered by the law and that this has enhanced investigations by the Judiciary and provided victims with access to justice, thereby facilitating investigation and criminal sanctions of those responsible for committing crimes during the civil-military dictatorship.

### III. PROVEN FACTS

#### A. Regarding the grave human rights violations committed during the military dictatorship

21. The Commission notes that the facts referred to in the instant case occurred in connection with the civil-military dictatorship in Uruguay from June 27, 1972, following a coup d'état, till February 28, 1985. As national and international organizations have pointed out, during that period State agents committed very serious human rights violations.

22. The IACHR stated that "the military government in power in Uruguay from June 1973 to March 1985 pursued a systematic policy of repression, characterized by a pattern of extrajudicial executions, forced disappearances of adults and children, torture and abduction of children, among other grave violations of human rights."<sup>3</sup> In its 1978 country report on Uruguay, the Inter-American Commission stated that since 1973 it had received information "charging the Uruguayan authorities with responsibility for the violent death, resulting from physical abuse, of a considerable number of men and women who were being held under detention."<sup>4</sup> For its part, the Inter-American Court established in the case of *Gelman v. Uruguay* that during the civil-military dictatorship, "daily forms of surveillance and control of society were implemented, and, more specifically, forms of repression against leftist political organizations" and it reported that during that period there were numerous cases of children being abducted, forced disappearances, torture, and extrajudicial executions.<sup>5</sup>

23. The Peace Commission of Uruguay established by the Office of the President of the Republic and charged with analyzing information regarding forced disappearances committed during the military dictatorship submitted its final report in 2013, stating that it "has become fully convinced of the serious violations committed during the de facto regime. From torture, and illegitimate detention in clandestine centers to the most serious cases of forced disappearance, the Commission has ascertained acts by State agents who, in the course of their public duties, operated outside the law, using illegal methods of repression."<sup>6</sup> The report stated that "the remains of all the disappeared persons who died as of 1973 (...) were allegedly exhumed toward the end of 1984, incinerated or cremated in crudely constructed boilers or furnaces using additional fuels, and finally tossed into the River Plate at a spot close to Barrio Paso de la Arena which has been located and plotted in detail."<sup>7</sup> On April 10, 2003, the President of the Republic accepted "in full the conclusions of the Final Report of the Peace Commission, and assumed that they constitute the official version on the situation of persons disappeared during the de facto regime."<sup>8</sup>

24. In addition, the "Report of the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985" of August 9, 2005, drawn up by the National Army's Investigative Commission on express orders from the President of the Republic, placed on record, with regard to detainees, that:

<sup>3</sup> IACHR, Final Written Observations, Case 12.607, Juan Gelman, María Claudia García Iruretagoyena de Gelman, and María Macarena Gelman Iruretagoyena, Uruguay, par.4

<sup>4</sup> IACHR, Report on the Situation of Human Rights in Uruguay, OEA/Ser.L/V/II.43, Doc. 19, corr.1, January 31, 1978, [Chapter II] par. 3.

<sup>5</sup> I/A Court HR. Case of *Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. [Tr. 46], 58, 59, 60.

<sup>6</sup> Final Report of the Peace Commission, April 10, 2003, paras 42ff.

<sup>7</sup> Final Report of the Peace Commission, April 10, 2003, par. 52..

<sup>8</sup> Decree of April 16, 2003.

(...) when a detainee died before, during, or after interrogation, there was no intervention by the justice system and, in some cases, the judiciary was informed that the detainee had fled, which gave rise to a communique calling for his arrest, when in fact that citizen had already died. In some cases an arrest warrant was requested just to cover up the detainee's death.<sup>9</sup>

## B. On the Prescription Law (Ley de Caducidad)

25. On April 16, 1985, the Parliamentary Investigative Commission of the Chamber of Representatives presented its "Final Report on the Situation of Missing Persons and the Facts that Led to Their Disappearance", in which it concluded that between 1973 and 1978 there had been 174 disappearances involving Joint Force and military personnel. The report stated that, as regards the missing adults, they are presumed to have died as a result of the treatment meted out to them and ordered the Chamber, without prejudice to the continuation of some inquiries, to remit the files on those cases to the Supreme Court of Justice and the Executive.<sup>10</sup>

26. Law 15.848 on the Expiry of the Punitive Claims of the State (*Ley de Caducidad de la Pretensión Punitiva del Estado*, or Expiry Law) was enacted on December 22, 1986, establishing the following:

Article 1.- Let it be acknowledged that, consistent with the rationale underlying the situation derived from the agreement reached between political parties and the Armed Forces in August 1984 and with a view to completing the transition to full implementation of the constitutional order, exercise of the punitive claims of the State with respect to crimes committed up to March 1, 1985 by military and police personnel, purportedly for political reasons (*equiparados y asimilados por móviles políticos*) or in the course of duty or on orders from commanders operating during the de facto regime, has expired.

Article 3.- For the purposes contemplated in the foregoing articles, the judge hearing the corresponding charges shall demand that the Executive report within no more than 30 days of receipt of the communication whether it considers that the facts under investigation are or are not included within the scope of Article 1 of the present law. If the Executive so notifies, the Judge shall order the case files to be closed and archived. If, on the other hand, the Executive does not reply or states that they are not included, inquiries shall continue. (...).<sup>11</sup>

27. Several international organizations have repeatedly underscored the incompatibility of that norm with the duty to investigate serious human rights violations. In 1992, the IACHR pointed out that "[T]he law in question has the intended effect of dismissing all criminal proceedings involving past human rights violations. With that, the law eliminates any judicial possibility of a serious and impartial investigation designed to establish the crimes denounced and to identify their authors, accomplices, and accessories after the fact."<sup>12</sup> As a result, it concluded that Law 15.848 is incompatible with Article XVIII (Right to a fair trial) of the American Declaration on the Rights and Duties of Man and Articles 1, 8, and 25 of the American Convention on Human Rights.<sup>13</sup>

28. Likewise, on various occasions, at least since 1989, the Human Rights Committee has voiced its concern at the incompatibility of the norm with the International Covenant on Civil and Political Rights, which would, moreover, "have negative repercussion for the deterrence of future violations and would set an undesirable precedent both domestically and abroad." [unofficial translation]<sup>14</sup> In 1993, the Committee mentioned that in adopting the Law, "the State contributed to the creation of an atmosphere of impunity that could undermine the democratic order and bring about other serious human rights violations." [unofficial translation]<sup>15</sup>

29. In 2009, the Supreme Court of Uruguay admitted an action for unconstitutionality in a specific case against Articles 1, 3, and 4 of the Expiry Law. In its decision, it stated:

<sup>9</sup> Appendix 4. Report by the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985 Attached to the petitioner's brief of August 15, 2007.

<sup>10</sup> Final Report on the Situation of Missing Persons and Facts that Led to Their Disappearance by the Parliamentary Investigative Commission of the Chamber of Representatives.

<sup>11</sup> Law 15,848 of December 22, 1986.

<sup>12</sup> IACHR, Report 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, and 10.375. Merits, 35.

<sup>13</sup> IACHR, Report 29/92, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, and 10.375. Merits, Uruguay, October 2, 1992, recommendation No. 1.

<sup>14</sup> Report of the Human Rights Committee, fortieth session, September 29, 1989, para. 275

<sup>15</sup> Human Rights Committee, Examination of reports submitted by States parties under Articles 40 of the Covenant, May 5, 1993, para 7.

(...) "to declare the expiration of criminal prosecutions, in any case, exceeds the powers of the legislators and invades the forum of a function constitutionally assigned to judges, so that, for whatever reason, the legislature could not arrogate to itself the power of deciding that the period had expired regarding prosecution for certain crimes.

To summarize, the unlawfulness of an amnesty law enacted for the benefit of military and police officials who committed [serious violations of human rights], who enjoy impunity during de facto regimes, has been declared by courts, of both the international community and the States that went through similar processes experienced by Uruguay during the same period in time. Such rulings, given the similarity with the issue under analysis and the relevance they have had, could not be ignored in the examination of the constitutionality of Law [No.] 15.848 and have been taken into account by the Corporation to issue the present ruling."<sup>16</sup>

30. For its part, the Inter-American Court considered, in its judgment in the *Gelman case v. Uruguay*, n 2011, that "the provisions of the Expiry Law that impede the investigation and punishment of serious violations of rights have no legal effect and, therefore, cannot continue to obstruct the investigation of the facts of this case and the identification and punishment of those responsible, nor can they have the same or similar impact on other cases of serious violations of human rights enshrined in the American Convention that may have occurred in Uruguay."<sup>17</sup>

31. On November 1, 2011, Uruguay promulgated Law 18,831, which amended Law 15.848. That law states:

Article 1. Full exercise of the punitive claims of the State are restored for crimes committed in the implementation of State terrorism up to March 1, 1985 and included in Article 1 of Law No. 15.848 of December 22, 1986.

Article 2. No time limits of any kind shall be set -- procedural, prescriptive, or expiry-related -- in the period between December 1986 and the entry into force of this law, for the crimes referred to in Article 1 of this law.

Article 3. Let it be hereby declared that the crimes referred to in the foregoing Articles are crimes against humanity in accordance with international treaties to which the Republic is party.<sup>18</sup>

32. Likewise, the Executive issued Decree No. 323/2011, which revoked "for reasons of legitimacy, all administrative acts and communications issued by the Executive Branch in application of Article 3 of the Expiry Law, considering that the facts denounced were included in the provisions of Article 1 of the above-mentioned law."<sup>19</sup>

33. Subsequently, on February 22, 2013, the Supreme Court of Justice of Uruguay declared the unconstitutionality of Articles 2 and 3 of Law 18.831 of 2011 in a concrete case, with one judge dissenting. That same Court also dismissed the action for unconstitutionality brought against Article 1 of law 18.831.<sup>20</sup>

34. In its monitoring of compliance with judgment resolution in the *Gelman case*, in 2013 the Inter-American Court stated that " the issuance of the aforementioned Decree and Law appears to have little practical utility if, owing to subsequent court rulings, such crimes are declared expired, which would open up the possibility that enforced disappearances and other gross human rights violations committed in this case, and during the dictatorship in Uruguay, would go unpunished. Thus, beyond declaring the "re-establishment of the State's punitive claims" through said Law, certain

<sup>16</sup> Supreme Court of Justice. [Judgment No. 365. Sabalsagaray Curutchet, Blanca Stela](#). Complaint. Unconstitutionality objection, Articles 1, 3, and 4 of Law No.15.848, File card 97-397/2004; see also I/A Court H.R. Case of *Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. 219.

<sup>17</sup> I/A Court HR. Case of *Gelman v. Uruguay*, Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, par. 232.

<sup>18</sup> Law No. 18.831 of November 1, 2011, promulgated by the Eastern Republic of Uruguay.

<sup>19</sup> I/A Court of H.R. Resolution by the Inter-American Court of Human Rights, Case of *Gelman v. Uruguay*, of March 20, 2013, Monitoring Compliance with Judgment, par. 43.

<sup>20</sup> Supreme Court of Justice of the Eastern Republic of Uruguay, Judgment No. 20 of February 22, 2013.



considerations included in the Supreme Court ruling of February 22, 2013, and the manner in which they are expressed, could imply a serious obstacle to the investigation of gross human rights violations committed, in light of the Court's order."<sup>21</sup>

35. According to the information available, in 2017 and 2018 the Supreme Court of Justice handed down judgments declaring that the imprescriptibility of crimes against humanity committed during the dictatorship is unconstitutional, using arguments similar to those adduced in its 2013 ruling.<sup>22</sup> In 2017, the IACHR lamented that the Supreme Court of Justice had handed down a decision of that nature and it issued a reminder that "it contravenes Uruguay's international obligations with regard to human rights and inter-American standards."<sup>23</sup>

36. In 2019, following its working visit to Uruguay on May 27 and 29, 2019, the Commission expressed its utmost concern that, despite efforts by the State, there are still judicial interpretations in criminal proceedings that deny the imprescriptibility of the grave human rights violations committed under the civil-military dictatorship. The Commission stated that those interpretations led to the perpetrators of crimes against humanity going unpunished and to the denial of justice and reparation for the victims.<sup>24</sup>

37. According to information in the public domain, in 2019 the Supreme Court of Justice dismissed appeals for annulment because it considered that it was inadmissible to take into consideration (*computar*) the prescription period during the period in which the Expiry Law was in effect. In 2019, the IACHR took note through a press release, that on May 30 of that year, the Supreme Court of Justice had unanimously dismissed an appeal for annulment filed by the defense in the case of the "especially aggravated murder" of victim Gerardo Alter. In its substantiation of its ruling, the Court considered that "the de facto regime period cannot be taken into account when calculating the period for prescription of the criminal action, because during that time, its incumbent (*su titular*) was prevented from conducting the corresponding investigations." The Commission stressed that while that decision constitutes progress with respect to investigation of the facts of the case, it is vital that, in accordance with inter-American standards, judicial authorities declare that the serious human rights violations committed during the civil-military dictatorship do not prescribe.<sup>25</sup>

### C. The alleged victims

38. **Diana Maidanik Potasnik** was 21 years old at the time and Mónica Wodzislawski and Flora Potasnik are her next-of-kin.<sup>26</sup>

39. **Laura Raggio Odizzio** was 19 years old at the time and her next-of-kin are her mother Marta Odizzio de Raggio and her brothers Horacio Enrique Raggio Odizzio and Daniel Raggio Odizzio.<sup>27</sup>

40. **Silvia Reyes de Barrios** was 21 years old at the time and over six months' pregnant.<sup>28</sup> She was married to Washington Barrios and had a close relationship with her parents-in-law Washington Barrios and María

<sup>21</sup> I/A Court of H.R. Resolution by the Inter-American Court of Human Rights, Case of Gelman v. Uruguay, of March 20, 2013, Monitoring Compliance with Judgment, par. 54.

<sup>22</sup> Ladiaria.com.uy, [Nueva Sentencia de la SCJ declaró inconstitucional la imprescriptibilidad de delitos de lesa humanidad en desaparición de Eduardo Pérez](#), February 9, 2018; see also: Supreme Court of Justice.. [Judgment No. 680/2017](#) of September 25, 2017.

<sup>23</sup> [IACHR Wraps Up 165th Regular Session in Uruguay](#), October 27, 2017.

<sup>24</sup> Press release, [IACHR Completes Visit to Uruguay](#), May 31, 2019.

<sup>25</sup> Press release, [CIDH toma nota de decisión judicial en Uruguay que limita la aplicación de la prescripción en crimen cometido durante la dictadura cívico militar](#), June 24, 2019.

<sup>26</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>27</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>28</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

Fernández Rodríguez, her sister-in-law Jaqueline Barrios, her sister Estela Reyes, and her parents Arturo Ricardo Reyes and Celia Sedarri<sup>29</sup>

41. **Luis Eduardo González González** was 22 at the time, married, a medical student, worker, and member of the Communist and Revolutionary Party of Uruguay. His mother is Amalia González de González and his wife is Elena Zaffaroni Rocco, who was pregnant at the time when the facts of this case took place. Their child was born in April 1975.<sup>30</sup>

42. **Oscar Tassino Asteazu** was 40 years old at the time, married to Disnarda Flores de Tassino, a trade union leader in the Agrupación de la Administración de las Usinas y Teléfonos del Estado (AUTE), and a very active and militant member of the Communist Party of Uruguay. He was the father of Karina Teresa Tassino and brother of Javier Tassino and Álvaro Luis Tassino.<sup>31</sup>

#### **D. Facts of the case and criminal investigations**

##### **1. Facts relating to Laura Raggio, Silvia Reyes, and Diana Maidanik**

43. According to statements by Jaqueline Barrios, the sister-in-law to Silvia Reyes, and María Fernández Rodríguez, Silvia Reyes's mother-in-law, who personally witnessed what happened, on April 21, 1974 a Joint Forces group comprising members of the armed forces and police, banged on the door of Washington Barrios's home, located at Mariano Soler 3098 bis, apartment 5, at 2:45 a.m., where he was with his wife María and 10-year-old daughter Jaqueline, asking for his son Washington Barrios. When they realized that he was the father, they left "shouting like hell and firing off their sub-machine guns"<sup>32</sup> and went to apartment No. 3, across from where they were, where his son lived.<sup>33</sup>

44. By their account, the Joint Forces arrived at that apartment firing off their weapons and knocked down the door opening onto a patio opposite the apartment. From there, they fired directly at the closed door of the apartment where Laura Raggio, Silvia Reyes, and Diana Maidanik were staying.<sup>34</sup> They said that all three women were killed by those bursts of gunfire.<sup>35</sup>

45. They stated that, after firing at apartment No. 3, the Joint Forces personnel had gone up to Washington Barrios's mother and asked her "where is your son as I personally am going to kill him."<sup>36</sup> They declared that on that same day several army trucks arrived with soldiers, who went into apartment No. 3 and made off with all the furniture.<sup>37</sup>

46. Silvia Reyes's sister-in-law stated that when they entered the apartment they had found more than 200 cartridges from the shots fired and bullets stuck in the wall with pieces of scalp. She also stated that she had heard two bursts of gunfire from numerous weapons firing simultaneously for about 15 minutes.<sup>38</sup>

<sup>29</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>30</sup> Appendix 1.1. Complaint filed by Amalia González de González regarding the disappearance of his son, Luis Eduardo González with the 10th Criminal Court of First Instance. Attached to the petitioner's brief of August 15, 2007.

<sup>31</sup> Appendix 3.1. Complaint filed by Disnarda Flores regarding the disappearance of Oscar Tassino Asteazu. Attached to the petitioner's brief of August 15, 2007.

<sup>32</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p.1 Attached to the petitioner's brief of August 15, 2007.

<sup>33</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p.1 Attached to the petitioner's brief of August 15, 2007.

<sup>34</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p. 1. Attached to the petitioner's brief of August 15, 2007.

<sup>35</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p. 1. Attached to the petitioner's brief of August 15, 2007.

<sup>36</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p. 1. Attached to the petitioner's brief of August 15, 2007.

<sup>37</sup> Appendix 2.1. Denunciation on October 15, 1986 of the "homicide" of Laura Raggio, Silvia Reyes, and Diana Maidanik, p. 2. Attached to the petitioner's brief of August 15, 2007.

<sup>38</sup> Appendix 2.3. Testimony by Jacqueline Barrios Fernández, Silvia Reyes's sister-in-law, regarding the facts related to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007; Appendix 2.17. Second testimony by [continues ...]

47. For her part, María Fernández Rodríguez, Silvia Reyes's mother-in-law, declared that:

My daughter-in-law's body carried out by the company in a coffin was naked, with her abdomen and sides wasted; one ear was missing and she had bullet wounds to her face and forehead. It was inside the apartment that they killed them, behind the door, where there was blood everywhere, with the wall opposite punctured by bullet holes and the girls' hair hanging from the bullets on the wall opposite, along with bullets stuck in the wall and the linings of the wall sticking out where the bullets had hit (...).<sup>39</sup>

48. One of Silvia Reyes's neighbors also declared that:

(...) The shooting, the bullets kept coming for 5 or 7 minutes, or 10, who knows, until they stopped firing, and the military and girls in the apartment next door started shouting, the girls screaming that they mustn't fire, mustn't kill them, after which there was a burst of machine gun fire which made my walls shake, and then the firing stopped completely. (...).<sup>40</sup>

49. On the other hand, the file contains the Joint Forces version, according to which the alleged victims' deaths occurred in a fight-out with them. According to the communique issued by the Joint Forces press office, on April 21, 1974, at 2:50 a.m., the Joint Forces raided the property located at Ramón de Santiago No 3086, apartment No 3. The Joint Forces stated that after knocking on the door to no avail, they had forced open the door and were met with a heavy round of shots from several weapons.<sup>41</sup> The press release states that:

During the exchange of fire, the insurgents tossed powerful hand grenades at them, acquired from Argentina, in light of the dangerousness and heavy weaponry of the criminals, it was decided to use full force to quell them, at which point a senior officer of the Joint Forces trying to enter the room where the mafiosi were hiding was seriously wounded point blank by massive shorts to the neck and spine. When some of the Joint Forces personnel tried to rescue the wounded officer, one of the Heads of the Joint Forces was shot in the arm, in another heavy burst of gunfire.- When the security forces finally managed to enter the insurgents' hideout, they found three dead females, namely those who had met the Joint Forces personnel involved with a heavy burst of gunfire.<sup>42</sup>

50. Three Joint Forces agents backed that version of what had happened. One stated that:

(...) I enter the room and to my right, in a corner, there were three women clinging to each other, a horrific sight for anyone to see. No doubt they were hiding behind the door, in a corner between two walls, to the right of the door. I see that one of the women has a grenade pin on one of her fingers and her right hand (I don't know which woman it was) in a bag. I go up and look into the open bag and found that hand clutching a grenade, and there was something else in that bag [...]. The other dead women had weapons, too. I remember a 38 caliber revolver, grenades, and handguns. None of them had submachine guns or anything like that. I don't remember seeing submachine guns but maybe they had them. They definitely had handguns.<sup>43</sup>

[... continuation]

Jacqueline Barrios Fernández, Silvia Reyes's sister-in-law, regarding the facts related to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>39</sup> Appendix 2.4. Testimony by María Fernández Rodríguez, Silvia Reyes's mother-in-law, regarding the facts related to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>40</sup> Appendix 2.21. Testimony by Hugo Néstor Conde, one of Silvia Reyes's neighbors, regarding the facts related to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>41</sup> Appendix 2.11. Press release No. 1090 of the Joint Forces' Press Office, giving their version of the facts relating to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>42</sup> Appendix 2.11. Press release No. 1090 of the Joint Forces' Press Office, giving their version of the facts relating to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>43</sup> Appendix 2.14. Statement by Joint Forces agent Jose Nino Gavazzo Pereira, giving his version of the facts relating to the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

51. In a press release on July 12, 1974, the Joint Forces' Press Office reported the death of the Joint Forces officer who had been seriously wounded in the operation in which Silvia Reyes, Laura Raggio, and Diana Maidanik died, on July 11, 1974.<sup>44</sup>

## 2. Complaint and investigation of the facts

52. On October 15, 1986, Flora Potasnik, Diana Maidanik's mother, Arturo Ricardo Reyes, Silvia Reyes's father, and Marta Odizzio de Raggio, Laura Raggio's mother, filed a criminal complaint for the murder of Laura Raggio, Silvia Reyes, and Diana Maidanik, with the Eighth First Instance Criminal Court.<sup>45</sup>

53. As indicated above, the Expiry Law was issued on December 22, 1986. On March 24, 1987, Arturo Reyes, Flora Potasnik, and Marta Odizzio De Raggio brought an unconstitutionality action with the Eighth First Instance Criminal Court, which referred it the Supreme Court of Justice, against Articles 1, 2, 3, and 4 of the Expiry Law, stating that it violated the principle of separation of power, the principle that the judiciary must be independent, and the rights of access to justice and equality before the law.<sup>46</sup> On August 10, 1988, the Supreme Court of Justice declared the unconstitutionality action unfounded, stating merely that "as in previous cases relating to Law 15.848, it will dismiss claims of unconstitutionality."<sup>47</sup>

54. On December 21, 1988, the Supreme Court of Justice notified the Judge of the Eighth First Instance Criminal Court that the criminal proceedings initiated on account of the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik had been included in the scope of the Expiry Law by a decision of the Executive Branch.<sup>48</sup>

55. On October 28, 2005, the next-of-kin of the alleged victims Mónica Raquel Wodzislowski, Horacio Enrique Raggio Odizzio, Celia Natividad Sedarri Aparicio, and Daniel Raggio filed an application to re-open criminal investigations with the Eighth First Instance Criminal Court, arguing that including the case in the scope of the Expiry Law precluded any possibility of investigation, whereas the State had an obligation to investigate what had happened.<sup>49</sup>

56. Subsequently, the Court of First Instance consulted the President of the Republic regarding whether the quest for truth in this case was included in the Expiry law.<sup>50</sup> On December 12, 2005, the President of the Republic issued a resolution:

[...] 5. As regards the specific content of the consultation by the Judiciary -- i.e., "the quest for truth", the undersigned considers that the Executive does not possess any power to prevent it, and that it is a matter that concerns the judiciary (*se trata de una cuestión de resorte jurisdiccional*).

(...)

RESOLVES:

1. Let these documents relating to legal proceedings be returned to the Judiciary, with an indication that the Executive lacks sufficient wherewithal to declare that the case is or is not included under Article 1 of Law No. 15.848 and is not empowered in any way to prevent the quest for truth.<sup>51</sup>

<sup>44</sup> Appendix 2.15. Press release of the Joint Forces' Press Office, reporting the death of the officer wounded during the operation in which Silvia Reyes, Laura Raggio, and Diana Maidanik died.. Appended to the petitioner's brief of August 15, 2007; Annex 2.16. Medical records of joint forces officer Julio Cesar Gutiérrez. Attached to the petitioner's brief of August 15, 2007.

<sup>45</sup> Appendix 2.1. Complaint filed on October 15, 1986 denouncing the "homicide" of Laura Raggio, Silvia Reyes y Diana Maidanik, Attached to the petitioner's brief of August 15, 2007.

<sup>46</sup> Appendix 2.5. Constitutionality action brought by Arturo R. Reyes, Flora Potasnik, and Marta O de Raggio regarding the constitutionality of Law 15.848 of 1986. Attached to the petitioner's brief of August 15, 2007.

<sup>47</sup> Appendix 2.7. Ruling of the Supreme Court of Justice on the constitutionality action brought by Arturo R. Reyes, Flora Potasnik, and Marta O de Raggio regarding the constitutionality of Law 15.848 of 1986. Attached to the petitioner's brief of August 15, 2007.

<sup>48</sup> Appendix 2.8. Communication by the Supreme Court of Justice to the Eighth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>49</sup> Appendix 2.9. Application to re-open criminal proceedings regarding the deaths of Silvia Reyes, Laura Raggio, and Diana Maidanik. Attached to the petitioner's brief of August 15, 2007.

<sup>50</sup> Appendix 2.10. Response of the President of the State of Uruguay to the request for information of the Eighth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

57. In light of the above, in 2006, investigations into the deaths of the alleged victims resumed.<sup>52</sup> On September 8, 2006, the petitioner requested the Eighth First Instance Criminal Court to conduct a series of evidentiary proceedings, including: inspection of the site of the reported facts, receipt of testimony from a former member of the military who had been at the property where the Barrios family lived, and a confrontation between the Joint Forces agents who had testified and the Silvia Reyes's mother-in-law and sister-in-law in order to clear up contradictions in their testimonies<sup>53</sup>. The petitioner places on record that, for his part, the First Instance Court judge merely asked for an on-site inspection and a sketch and photographs of the site.<sup>54</sup> The Commission has no information as to whether other proceedings were carried out.

58. On March 1, 2007, the next-of-kin of the alleged victims were notified of Decree No. 204 of 2007 through which the First Instance Criminal Court shelved the proceedings.<sup>55</sup> On June 14, 2007, the alleged victims' next-of-kin filed a request with the Eighth First Instance Criminal Court to reverse the shelving of the case and presented testimony regarding the proceedings that had led to it being shelved.<sup>56</sup>

### 3. Regarding the disappearance of Luis Eduardo González González

59. According to a statement by the mother of the alleged victim, Amalia González, at 2:00 a.m. on December 13, 1974, two persons dressed in civilian clothes came to her home, asking for "el chiqui," the alleged victim's nickname. When they were not allowed in, they identified themselves as members of the Joint Forces and a group of soldiers armed with sub-machine guns burst into the home. The mother states that they stayed there for several hours until they managed to find Luis Eduardo González at Scosería No 2556, apartment 701<sup>57</sup>. They then went there and arrested the alleged victim together with his pregnant wife, Elena Zaffaroni Rocco,<sup>58</sup> Later both were taken to the 6th Cavalry Regiment, a dependency of Army Division No. 1.<sup>59</sup>

60. The Commission also has the testimony of seven others detained at the same time as Luis Eduardo González who described his deteriorated physical and mental state as well as the mistreatment and tortures to which they were subjected.<sup>60</sup>

[... continuation]

<sup>51</sup> Appendix 2.10. Response of the President of the State of Uruguay to the request for information of the Eighth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>52</sup> Appendix 2.10. Response of the President of the State of Uruguay to the request for information of the Eighth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>53</sup> Appendix 2.22. Request by the petitioners for processing of evidence in the criminal proceedings of 2006. Attached to the petitioner's brief of August 15, 2007.

<sup>54</sup> Appendix 2.23. Order for the submission of evidence in the 2006 criminal proceedings by the Eight First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007; Appendix 2.24. Photographic documentation of the scene of the alleged crime. Attached to the petitioner's brief of August 15, 2007.

<sup>55</sup> Appendix 2.25. Request by the next-of-kin of Silvia Reyes, Laura Raggi, and Diana Maidanik to the Eighth First Instance Criminal Court to reverse the shelving of the case and presentation of testimony regarding the proceedings that had led to it being shelved. Attached to the petitioner's brief of August 15, 2007.

<sup>56</sup> Appendix 2.25. Request by the next-of-kin of Silvia Reyes, Laura Raggi, and Diana Maidanik to the Eighth First Instance Criminal Court to reverse the shelving of the case and present testimony regarding the proceedings that had led to it being shelved. Attached to the petitioner's brief of August 15, 2007.

<sup>57</sup> Appendix 1.3. Testimony of Elena Zaffaroni Rocco regarding the disappearance of Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007.

<sup>58</sup> Appendix 1.3. Testimony of Elena Zaffaroni Rocco regarding the disappearance of Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007.

<sup>59</sup> Appendix 1.1. Complaint filed by Amalia González de González regarding the disappearance of her son, Luis Eduardo González with the 10th Criminal Court of First Instance. Attached to the petitioner's brief of August 15, 2007.

<sup>60</sup> Appendix 1.5. Testimony of Jorge Aníbal González Mure detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007; Appendix 1.6. Testimony of Graciela Duarte Badiola detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007; Appendix 1.7. Testimony of Jose Milton Guzmán Martínez detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007. Appendix 1.8. Testimony of Jorge Mario Porley Eirale detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007; Appendix 1.9. Testimony of Graciela Natividad Souza Antognazza detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007; Appendix 1.10. Testimony of Walter Raúl Bianchi López detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007; Appendix 1.11. Testimony of María Mercedes Xavier de Mello Ferrand detained at the same time as Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007.

61. The wife of the alleged victim declared that she was deprived of liberty together with him and that in the detention center she had been kept blindfolded most of the time, but that she could hear when they were torturing her husband. She said that at some point they took off her blindfold and she saw her husband having convulsions. She said that after that she did not see her husband until December 24. She stated that then:

(...) They take me to a van where he is, after first telling me that I was going to have an interview with my husband and that they were going to propose my release if he collaborated. They asked me what I thought and I said I wanted to see him. - They placed us opposite one another in the van with my husband, me with the blindfold or scarf on and he in a hood. We were surrounded by people, with my husband and I holding hands, sitting opposite one another, and my husband said to them that they had said he would not be wearing a hood, so that they started shouting that he had to wear one. One of the interrogators said that it was up to us both to decide whether they would let me go, provided that he collaborated and they told him that were not going to do anything else to me and my child could be born out of captivity. The officer added that they had brought us together to that we could decide because Luis had not wanted to take that decision on his own, because if he collaborated I would not want to see him again. My husband was having difficulty breathing. His pants were torn as far as I could see. He was barefoot, with his feet swollen and bruised. I began crying, saying that it was his life and they should do nothing for me, and he told me I should think about it and that they had promised him 24 hours for me to think it over and I said no. Then, in the middle of the conversation he told me that they were asking about Argentina, of ties with it of people in our group, with people from other political organizations. There he insisted that I should take my time and I realized that he would not withstand another torture session. There, when he spoke about the ties with Argentina, the interrogators began shouting "don't talk, this is about something else." My husband and I embraced, they separated us at the gate and took me to the barrack hut and I never saw him again.<sup>61</sup>

62. The wife of the alleged victim stated that she was released from the Punta Rieles prison in 1978.<sup>62</sup> For her part, the alleged victim's mother stated that some days after the disappearance of her son she had gone to Army Division No. 1 where a Major told her that her son had been taken to a place they needed to reconnoiter and there he had escaped through a window and that "they didn't want to shoot him; so that by now he had probably gone overseas crossed over the River Plate (*cruzado el charco*)."<sup>63</sup> She stated that on March 6 1975 she has asked Army Division No. 1 for information about her son and again they told her he had fled from the detention center and for that reason he was currently subpoenaed to appear.<sup>64</sup> She indicated that:

When he was ordered to appear I went to the Female Military Police to inquire and an official there told me that if he had escaped she would know about it, and that she had made the "wanted" poster for my son a few days before and would try to find out about him. - She crossed a large patio and came back in about an hour, looking as if she had been crying. Changing her tone, because before she had been kind to be,, she told me that my son had fled and when he appeared she would let me know.<sup>65</sup>

63. She said that on January 11, 1976, "wanted" posters showing her son had been published in the press, alongside another person in the photo, "looking as if he had been horribly mistreated."<sup>66</sup>

#### **4. Regarding the investigation into the disappearance of Luis Eduardo González González**

64. On July 14, 1985, Amalia González filed a complaint with the Tenth First Instance Criminal Court regarding the disappearance of her son Luis Eduardo González.<sup>67</sup> According to the information available, she also filed

<sup>61</sup> Appendix 1.3. Testimony of Elena Zaffaroni Rocco, wife of Luis Eduardo González regarding his detention and subsequent disappearance. Attached to the petitioner's brief of August 15, 2007.

<sup>62</sup> Appendix 1.3. Testimony of Elena Zaffaroni Rocco, wife of Luis Eduardo González regarding his detention and subsequent disappearance. Attached to the petitioner's brief of August 15, 2007.

<sup>63</sup> The expression "cruzar el charco" means crossing over from Uruguay to Argentina.

<sup>64</sup> Appendix 1.1. Complaint filed by Amalia González de González regarding the disappearance of her son, Luis Eduardo González with the 10th Criminal Court of First Instance. Attached to the petitioner's brief of August 15, 2007.

<sup>65</sup> Appendix 1.2. Testimony of Amalia González de González about the disappearance of Luis Eduardo González González. Attached to the petitioner's brief of August 15, 2007.

<sup>66</sup> Appendix 1.2. Testimony of Amalia González de González about the disappearance of Luis Eduardo González González. Attached to the petitioner's brief of August 15, 2007.

<sup>67</sup> Appendix 1.1. Complaint filed by Amalia González de González regarding the disappearance of her son, Luis Eduardo González with the 10th Criminal Court of First Instance. Attached to the petitioner's brief of August 15, 2007.

an application for habeas corpus. However, she was told that "he had fled while reconnoitering a site (*marcaba un local*)."<sup>68</sup>

65. On September 24, 1985, a conflict arose between the ordinary and the military judicial system with respect to competence in the case.<sup>69</sup> The Commission does not have the resolution settling the dispute. Nevertheless, it is on record that, on February 16, 1987, the Supreme Court of Justice ordered the remission of the case files to the Eleventh First Instance Criminal Court pursuant to Article 3 of Law 15.848.<sup>70</sup>

66. As indicated above, the Expiry Law was issued on December 22, 1986. On April 9, 1987, Amalia González brought an unconstitutionality action against Articles 1, 2, 3, and 4 of the Expiry Law, arguing that they violated the principle of the separation of powers, judicial independence, and other rights.<sup>71</sup> On July 22, 1988, the Supreme Court of Justice declared that action unfounded.<sup>72</sup>

67. At the same time as the unconstitutionality action, Amalia González filed a request with the Tenth First Instance Criminal Court to be personally notified of the administrative proceeding of the Executive on whether or not the disappearance of her son Luis Eduardo González was included in the scope of Law 15.848.<sup>73</sup> On May 26, 1989, the Executive Branch notified the Tenth First Instance Criminal Court that the case of Luis Eduardo González was included within the scope of the Expiry Law.<sup>74</sup>

68. On April 16, 1985, the Parliamentary Investigative Commission of the Chamber of Representatives issued the "Final Report on the Situation of Missing Persons and the Facts that led to their Disappearance," which contains a list of persons disappeared by State agents between 1975 and 1978, including Luis Eduardo González.<sup>75</sup>

69. On August 8, 2005, the "The Commission Investigating the Fate of 33 Citizens in the period between June 27, 1973 and March 1, 1985 presented a report, which included the alleged victim, as follows:

Luis Eduardo González González (\*)<sup>76</sup>

He was arrested at his home [...] on December 13, 1974.

He was then taken to Regiment C Mec No. 6. He died at the end of December 1974.

In addition, this commission was unable to ascertain, based on the information received, whether his remains were buried inside the grounds pertaining to Battalion 1 Mec No. 13 or Battalion 1 Parach. No. 4, although there

<sup>68</sup> Appendix 1.1. Complaint filed by Amalia González de González regarding the disappearance of her son, Luis Eduardo González with the 10th Criminal Court of First Instance. Attached to the petitioner's brief of August 15, 2007.

<sup>69</sup> The conflict arose from a request to decline competence filed by the Third Military Court of First Instance with the Ninth First Instance Criminal Court, stating that the report of the "Investigative Committee on the Situation of Missing Persons and the Facts that led to their Disappearance" had pointed to facts relating to actions taken by the Armed Forces that could affect juridical rights protected by the Ordinary Criminal Code and by the Military Criminal Code thereby generating, in the opinion of the military first instance court a conflict of competence between the two jurisdictions. Appendix 1.12. Request to decline competence filed by the Military Jurisdiction with the First [Tr. Ninth?] First Instance Criminal Court with respect to the complaint filed by Amalia González de González. Attached to the petitioner's brief of August 15, 2007.

<sup>70</sup> Appendix 1.23. Order by the Supreme Court of Justice to remit the files on the case to the Tenth [Tr. Eleventh?] First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>71</sup> Appendix 1.24. Action claiming the unconstitutionality of Articles 1, 2, 3, and 4 of Law 15.8848 of 1986, brought by Amalia González de González. Attached to the petitioner's brief of August 15, 2007.

<sup>72</sup> Appendix 1.26. Ruling by the Supreme Court of Justice with respect to the action claiming the unconstitutionality of Articles 1, 2, 3, and 4 of Law 15.8848 of 1986, brought by Amalia González de González. Attached to the petitioner's brief of August 15, 2007.

<sup>73</sup> Appendix 1.27. Request for personal notification filed by Amalia González with the Tenth First Instance Criminal Court regarding whether the case of the disappearance of her son Luis Eduardo González was within the scope of Law 15.848. Attached to the petitioner's brief of August 15, 2007.

<sup>74</sup> Appendix 1.28. Notification to the Tenth First Instance Criminal Court that the case of Luis Eduardo González was included within the scope of Law 15.848 of 1986. Attached to the petitioner's brief of August 15, 2007.

<sup>75</sup> Final Report on the Situation of Missing Persons and Facts that Led to Their Disappearance by the Parliamentary Investigative Commission of the Chamber of Representatives.

<sup>76</sup> The report points out that cases marked with an asterisk (\*) are presumed to have been connected with intelligence operations and are therefore considered as fully within the sphere of responsibility of commanding officers, whether by action or omission.

is no doubt that his remains were exhumed and cremated and his ashes and remains scattered in the vicinity. (Grounds pertaining to Battalion 1. Parach. No. 14).

As attempt was made to cover up his death with a press releases reporting that he had escaped.<sup>77</sup>

70. On September 8, 2006, Amalia González filed another application for investigation with the Eleventh First Instance Criminal Court.<sup>78</sup> On December 19, 2006, the Court reported that this case had been archived in accordance with the provisions of Article 3 of Law 15.848 and that therefore the request for investigation was inadmissible.<sup>79</sup> On February 14, 2007, Amalia González requested the Eleventh First Instance Criminal Court to reverse the shelving of the case and asked to see testimony regarding the proceedings that had led to it being shelved.<sup>80</sup>

## 5. The disappearance of Oscar Tassino Asteazu

71. According to the complaint filed by the alleged victim's wife, Disnarda Flores de Tassino, at 8:00 p.m. on July 19, 1977, three armed individuals dressed in civilian clothes and claiming to be members of the Joint Forces arrived at the property located at Máximo Tajés 6632. They threatened the persons present at the property, while they waited for Oscar Tassino to arrive. She reported that when he arrived one hour later, he was violently pushed into the house, deprived of his possessions, and taken to one of the bedrooms where he was allegedly beaten. She pointed out that at 9:30 a.m. of the next day he was taken out of there with his face covered and while being beaten. He stated that subsequently Mr. Tassino had been seen in a clandestine detention center by people who say he was subjected to "horrific forms of torture."<sup>81</sup>

72. She stated that when she complained to the Joint Chiefs of Staff, she was told that her husband had not been arrested by them but that he had been subpoenaed to appear since May 1, 1977 and that she should go to the National Information and Intelligence Directorate of the Office of the Chief of Police in Montevideo. She reported that there they told her that her husband had been detained in January 1974 and released four days later. The petitioner state that the detention they were referring to had had to do with his trade union activity, had not lasted even one day, and that it had not been in January.<sup>82</sup>

## 6. The investigation into the disappearance of Oscar Tassino Asteazu

73. On June 26, 1985, Disnarda Flores de Tassino filed a complaint for the alleged disappearance and torture of her husband Oscar Tassino Asteazu.<sup>83</sup> In connection with that denunciation, she requested that evidence be gathered, including the taking of testimony and asking the Ministry of National Defense for the names of the officers and non-commissioned officers in charge of the operation of July 19, 1977.<sup>84</sup> There is no record in the file that those or any other actions having been taken.

<sup>77</sup> Appendix 4. Report by the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985 Attached to the petitioner's brief of August 15, 2007.

<sup>78</sup> Appendix 1.29. Application for investigation filed by Amalia González de González with the Eleventh First Instance Criminal Court regarding the disappearance of Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007.

<sup>79</sup> Appendix 1.30. Reply by the First Instance Criminal Court to the application for investigation into the disappearance of Luis Eduardo González. Attached to the petitioner's brief of August 15, 2007.

<sup>80</sup> Appendix 1.31. Application by Amalia González requesting the Eleventh First Instance Criminal Court to reverse the shelving of the case and asking to see testimony regarding the proceedings that had led to it being shelved. Attached to the petitioner's brief of August 15, 2007.

<sup>81</sup> Appendix 3.1. Complaint filed by Disnarda Flores regarding the disappearance of Oscar Tassino Asteazu. Attached to the petitioner's brief of August 15, 2007.

<sup>82</sup> Appendix 3.1. Complaint filed by Disnarda Flores regarding the disappearance of Oscar Tassino Asteazu. Attached to the petitioner's brief of August 15, 2007.

<sup>83</sup> Appendix 3.1. Complaint filed by Disnarda Flores regarding the disappearance of Oscar Tassino Asteazu. Attached to the petitioner's brief of August 15, 2007.

<sup>84</sup> Appendix 3.1. Complaint filed by Disnarda Flores regarding the disappearance of Oscar Tassino Asteazu. Attached to the petitioner's brief of August 15, 2007.



74. On September 24, 1985, a conflict<sup>85</sup> arose between the ordinary and the military judicial system with respect to competence in the case.<sup>86</sup> On February 18, 1987, the Supreme Court of Justice referred the case to the Ninth First Instance Criminal Court.<sup>87</sup>

75. On July 23, 1987, Disnarda Flores de Tassino brought an unconstitutionality action against Articles 1, 2, 3, and 4 of the Expiry Law, arguing that they violated the principle of the separation of powers, judicial independence, and other rights.<sup>88</sup> On August 10, 1988, the Supreme Court of Justice declared that action unfounded, referring to its previous jurisprudence.<sup>89</sup>

76. On August 18, 1987, Disnarda Flores requested the Ninth First Instance Criminal Court that she be personally notified of the administrative proceeding of the Executive on whether or not the alleged disappearance and torture of Oscar Tassino Asteazu was included in the scope of the Expiry Law.<sup>90</sup> On October 20, 1988, the Executive Branch notified the Ninth First Instance Criminal Court that the case of Oscar Tassino Asteazu was included within the scope of Article 1 of the Expiry Law.<sup>91</sup>

77. On April 16, 1985, the Parliamentary Investigative Commission of the Chamber of Representatives issued the "Final Report on the Situation of Missing Persons and the Facts that Led to their Disappearance," which contains a list of persons disappeared between 1975 and 1978, including Oscar Tassino Asteazu.<sup>92</sup>

78. On April 10, 2003, the Peace Commission of Uruguay included Oscar Tassino Asteazu as a victim of disappearance and stated that he had died on July 21, 1977, that his remains had been buried in dependencies of the Armed Forces, exhumed in 1984, and burnt or cremated using makeshift boilers or furnaces, and tossed into the River Plate in an area in the vicinity of Barrio Paso de la Arena.<sup>93</sup> The Commission stresses that, according to the petitioner, that report stated that Oscar Tassino had been tortured and had died from a heavy blow.<sup>94</sup>

79. Likewise, on August 8, 2005, in its report the "Commission Investigating the Fate of 33 Citizens in the period between June 27, 1973 and March 1, 1985" referred to the detention of Oscar Tassino Asteazu as follows:

<sup>85</sup> The conflict arose from a request to decline competence filed by the Third Military Court of First Instance with the Ninth First Instance Criminal Court, stating that the report of the "Investigative Committee on the Situation of Missing Persons and the Facts that led to their Disappearance" had pointed to facts relating to actions taken by the Armed Forces that could affect juridical rights protected by the Ordinary Criminal Code and by the Military Criminal Code thereby generating, in the opinion of the military first instance court a conflict of competence between the two jurisdictions. Appendix 3.2. First request by the military judge to the ordinary law judge to decline competence in the case. Attached to the petitioner's brief of August 15, 2007.

<sup>86</sup> Appendix 3.2. First request by the military judge to the ordinary law judge to decline competence in the case. Attached to the petitioner's brief of August 15, 2007; Appendix 3.3. Opinion of the Public Prosecutor before the Supreme Court of Justice regarding the first competence dispute. Attached to the petitioner's brief of August 15, 2007; Appendix 3.4. Rejection by the ordinary law judge of the first request to decline competence. Attached to the petitioner's brief of August 15, 2007; Appendix 3.5. Second request by the Military Jurisdiction to the Ordinary Jurisdiction to decline competence in the Oscar Tassino case. Attached to the petitioner's brief of August 15, 2007; Appendix 3.6. Third request by the Military Jurisdiction to the Ordinary Jurisdiction to decline competence in the Oscar Tassino case. Attached to the petitioner's brief of August 15, 2007; Appendix 3.7. Opinion of the Public Prosecutor before the Supreme Court of Justice regarding the third competence dispute. Attached to the petitioner's brief of August 15, 2007; Appendix 3.8. Referral by the Supreme Court of Justice of the case regarding the alleged disappearance and torture of Oscar Tassino Asteazu to the Ninth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>87</sup> Appendix 3.8. Referral by the Supreme Court of Justice of the case regarding the alleged disappearance and torture of Oscar Tassino Asteazu to the Ninth First Instance Criminal Court. Attached to the petitioner's brief of August 15, 2007.

<sup>88</sup> Appendix 3.9. Action claiming the unconstitutionality of Articles 1, 2, 3, and 4 of Law 15.8848, brought by Disnarda Flores de Tassino. Attached to the petitioner's brief of August 15, 2007.

<sup>89</sup> Appendix 3.11. Ruling by the Supreme Court of Justice regarding the unconstitutionality action brought by Disnarda Flores de Tassino/ Attached to the petitioner's brief of August 15, 2007.

<sup>90</sup> Appendix 3.12. Request by Disnarda Flores de Tassino to the Ninth First Instance Criminal Court that she be personally notified of the administrative proceeding of the Executive on whether or not the alleged disappearance and torture of Oscar Tassino Asteazu was included in the scope of the Expiry Law. Attached to the petitioner's brief of August 15, 2007.

<sup>91</sup> Appendix 3.13. Notification of the inclusion of the case of OTA (Tr. Oscar Tassino Asteazu) in the scope of Law 15.848. Attached to the petitioner's brief of 2007.

<sup>92</sup> Final Report on the Situation of Missing Persons and Facts that Led to Their Disappearance by the Parliamentary Investigative Commission of the Chamber of Representatives.

<sup>93</sup> Report of the Peace Commission of the Eastern Republic of Uruguay, published on April 10, 2003.

<sup>94</sup> Petitioner's brief of August 15, 2015.

Oscar Tassino Asteazu (\*)<sup>95</sup>

He was detained by the Coordinating Body for Counterinsurgency Operations at a property located at Máximo Tajés No 6632, on July 19, 1977 and taken to the "La Tablada" detention center.

He died on or around July 24, 1977.

According to the information obtained, and contrary to the statements made by the Peace Commission in its report, his death was the result of suicide, committed as he was going to the bathroom without his guard, whereby it was not possible to determine how he killed himself, because no autopsy was performed.

His remains were buried on the grounds of Battalion 1 Mec No. 13 and not in Battalion 1 Parach. No. 14, subsequently exhumed, taken to grounds pertaining to Battalion No. 14, and cremated. His ashes and remains were scattered in the vicinity.<sup>96</sup>

80. On November 20, 2006, Oscar Tassino's next-of-kin again requested the Tenth First Instance Criminal Court to investigate the disappearance of the alleged victim, arguing that no light had been thrown on what happened either in the Peace Commission's report or in the Report on the Ultimate Fate of 33 Missing persons, because they contradict one another as well as the information provided by the Government regarding what happened to Oscar Tassino at the moment of his disappearance.<sup>97</sup> On March 27, 2003, that Court turned down the request for investigation.<sup>98</sup> On July 21, 2007, the same Court received a request to revert the archiving of the case and to issue the testimony of all proceedings undertaken in connection with it.<sup>99</sup> The Commission does not have the reply to that request.

#### IV. LEGAL ANALYSIS

##### A. Right to life (Article I of the American Declaration<sup>100</sup>) in connection with the death of Laura Raggio, Silvia Reyes y Diana Maidanik

81. The IACHR recalls that the right to life established in Article I of the American Declaration encompasses the ban on arbitrary deprivation of life relating to lethal use of force by State agents. The Commission has pointed out that, in its law enforcement initiatives, the State must not use force against individuals who have been apprehended by authorities, have surrendered, or who are wounded and abstain from hostile acts. The use of lethal force in such a manner would constitute extra-judicial killings in flagrant violation of Article 4 of the Convention and Article I of the Declaration.<sup>101</sup>

82. The Inter-American Court has held that "whenever the use of force by state agents results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements."<sup>102</sup>

<sup>95</sup> The report points out that cases marked with an asterisk (\*) are presumed to have been connected with intelligence operations and are therefore considered as fully within the sphere of responsibility of commanding officers, whether by action or omission.

<sup>96</sup> Appendix 4. Report by the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985 Attached to the petitioner's brief of August 15, 2007.

<sup>97</sup> Appendix 3.14. Request by the next-of-kin of Oscar Tassino to the Tenth First Instance Criminal Court to investigate the facts surrounding his disappearance. Attached to the petitioner's brief of August 15, 2007.

<sup>98</sup> Appendix 3.15. Rejection by the Tenth First Instance Criminal Court of the request for investigation into the disappearance of Oscar Tassino Asteazuz. Attached to the petitioner's brief of August 15, 2007.

<sup>99</sup> Appendix 3.16. Request by Oscar Tassino's next-of-kind for a reversal of the archiving of the case. Attached to the petitioner's brief of August 15, 2007.

<sup>100</sup> Article I of the American Declaration of the Rights and Duties of Man provides: "Every human being has the right to life, liberty and the security of his person."

<sup>101</sup> IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev.1 corr., October 22, 2002, par. 91

<sup>102</sup> I/A Court HR. Case of Zambrano-Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 108; Case of Cruz Sánchez et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of April 17, 2015. Series C No. 292, par. 291; and Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281. Par. 132.

83. As the Inter-American Court has point out, for an explanation for the use of lethal force to be considered satisfactory, it must be the result of an investigation that is compatible with the guarantees of independence, impartiality, and due diligence; moreover, it must address all the elements that, according to inter-American case law, have to be present in order to justify such use of force, which are, specifically, legitimate purpose, absolute necessity, and proportionality.<sup>103</sup>

84. In the same vein, the Commission notes that the United Nations' Basic Principles on the Use of Force and Firearms allow law enforcement officials to use firearms "to arrest a person presenting such a danger and resisting their authority."<sup>104</sup> That notwithstanding, as part of the requirements for use of force to be permissible under that hypothetical circumstance, the Principles say that: (i) [use of] it may be made only when less extreme means are insufficient to achieve these objectives; (ii) it "may only be made when strictly unavoidable in order to protect life"; (iii) law enforcement officials must give a "clear warning of their intent to use firearms"; and (iv) said warning must be given with sufficient time, unless to do so would endanger the law enforcement officials or other persons.<sup>105</sup>

85. Based on the foregoing, the State must demonstrate the legitimate purpose, absolute necessity, and proportionality of the use of lethal force in the specific circumstances of each case. In addition, as a result of those principles, the Commission recalls that state agents who take part in operations must apply the criteria of "differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required."<sup>106</sup>

86. In the instant case, what is disputed is whether, as the State maintains, the deaths of Laura Raggio, Silvia Reyes, and Diana Maidanik, occurred in a shoot-out between the armed forces and the alleged victims or whether, as the petitioner claims, they were extrajudicial executions.

87. In light of the above, the IACHR will analyze whether, regardless of the Joint Forces' version of what happened, the judicial determinations as part of the criminal proceedings met the abovementioned standards of a satisfactory explanation. Here, the Commission issues a reminder that in the criminal proceedings there is absolutely no clarification of the circumstances surrounding what happened. There are no findings related to such basic procedures as forensic or on-site inspections of the crime scene, expert opinions on the paths taken by bullets fired, atomic absorption spectrometry of the alleged victims' hands, or the result of confrontations between eye-witnesses and the next-of-kin of the alleged victims with testimony delivered by members of the joint forces taking part in the operation, which, taken together, would have helped provide a satisfactory account of the circumstances surrounding the facts of the case/ On the contrary, with respect to investigation, barriers were erected through the Expiry law to prevent clarification of the facts.

88. Apart from all that, the Commission considers that there is circumstantial evidence that, when taken as a whole, points to unjustified use of force and, rather, to the perpetration of extrajudicial executions. In particular:

- The context surrounding the facts of the case, including systematic practice of extrajudicial executions.
- Statements given by family members of the alleged victims and the stance taken by the State, according to which the facts of the case are related to the disappearance of Washington Barrios, Silvia Reyes's husband, which occurred later, added to his mother's statement according to which a member of the Joint Forces had asked her on the day it all happened "where is your son, because I personally am going to kill him," which suggests that the operation had been intentionally planned.

<sup>103</sup> I/A Court HR. Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 27, 2014. Series C No. 281, par. 134.

<sup>104</sup> Principles 9 AND 10 of the United Nations' Basic Principles on the Use of Force and Firearms, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>105</sup> I/A Court HR. Case of Nadege Dorzema et al. v. Dominican Republic, Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, par. 85.

<sup>106</sup> I/A Court HR. Case of Nadege Dorzema et al. v. Dominican Republic, Merits, Reparations and Costs. Judgment of October 24, 2012, Series C No. 251, par. 85.

- The various statements by witnesses on the circumstances surrounding what happened, which showed that parameters regarding the legitimate use of force were not followed in the operation, as evidenced by the bursts of gunfire lasting between 5 and 15 minutes, even though, according to some witnesses' testimony, the alleged victims were pleading not to be shot at and killed.
- In addition, the IACH wishes to point out that the nature of the wounds on the alleged victims' bodies suggests that the use of force deployed bore no relation to any proportional response or necessary use of force criterion. According to witnesses, for example, one of the corpses lacked an ear, her abdomen and sides were totally wasted, and she had bullet wounds all over her body, especially to her face, forehead, and legs.

89. In light of the above, the Commission concludes that the Uruguayan State is responsible for violation of the right to life established in Article 1 of the American Declaration, to the detriment of Laura Raggio, Silvia Reyes y Diana Maidanik.

**B. Rights to recognition as a person before the law (juridical personality), personal liberty, personal integrity, and the right to life (Articles 3, 7, 5, and 4 of the American Convention), in conjunction with the obligation to respect and guarantee rights (Article 1.1 of the same instrument<sup>107</sup>); Article 1.a <sup>108</sup> of the Inter-American Convention on Forced Disappearance of Persons (CIDFP) and rights of recognition of legal personality and civil rights, protection against arbitrary detention and of life, liberty, security, and integrity of persons (Articles XVII, XXV, and I of the American Declaration<sup>109</sup>) with regard to the disappearances of Luis Eduardo González González y Oscar Tassino Asteazu.**

90. The Inter-American Court has established that the American Declaration constitutes a source of international legal obligations for all member states of the Organization of American States. It has further established that the provisions of the instruments governing them, including the American Declaration, must be interpreted and applied within the context of developments in the field of international human rights law, given that said instruments were conceived first, and duly take into account other provisions of international law applicable to the member states that also legitimately prompt complaints of human rights violations.<sup>110</sup>

91. In its consistent case law on cases of forced disappearance of persons, the inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and

<sup>107</sup> The articles of the American Convention referred to in the title above provide as follows:

Article 3. Right to Juridical Personality. Every person has the right to recognition as a person before the law. Right to Life. 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.; Article 5. Right to Humane Treatment. 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; Article 7. Right to personal liberty. 1. Every person has the right to personal liberty and security; Article 8. Right to a Fair Trial. 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25. Judicial protection. 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties; Article 1.1. 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.

<sup>108</sup> Those Articles establish: 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; b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.

<sup>109</sup> Article XVII of the American Declaration: Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights. No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody. Article I. Every human being has the right to life, liberty and the security of his person.

<sup>110</sup>IACHR. Report No. 60/07. Merits. Rosendo Radilla Pacheco. Mexico. July 27, 2007, par. 88.

continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes.<sup>111</sup>

92. In keeping with its consolidated case law, the Commission finds that forced disappearance is a complex human rights violation that continues in time so long as the whereabouts of the victim or of his or her remains are not known. The disappearance as such only ends when the victim appears or his or her remains are found,<sup>112</sup> in such a way that her or his identity is confirmed.<sup>113</sup>

93. As for the rights violated, forced disappearance violates the right to personal liberty and places the victim at serious risk of irreparable harm to his or her rights to humane treatment and life. The Court has found that forced disappearance violates the right to humane treatment since "the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment."<sup>114</sup> The Commission and the Court have determined that it is clear that in the case of a forced disappearance, the victim's personal integrity is affected in all its dimensions.<sup>115</sup> The Court has also written that, even if the torture or deprivation of life of a forced disappearance victim cannot be proven in a given case, subjecting a person to State agents, or private parties acting with their acquiescence or tolerance, and that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person.<sup>116</sup>

94. According to the case law of both organs of the inter-American system, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>117</sup> Case law has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he or she has been killed.<sup>118</sup>

95. The Commission has also found that in cases of forced disappearance of persons, given the multiple and complex nature of this grave violation of human rights, its execution can include the specific infringement of the right to the acknowledgment of juridical personality.<sup>119</sup> The Inter-American Court has also pointed that

<sup>111</sup> IACHR. Report 101/01. Case 10.247 and others. Extra-legal Executions and forced disappearance of persons. Peru. October 10, 2001. Par. 178; IACHR. Application to the Inter-American Court of Human Rights in Case (11.324) of Narciso González et al. v. Dominican Republic. May 2, 2010, par. 103; IACHR. Application to the Inter-American Court of Human Rights in Case (12.517) of Gregoria Herminia Contreras et al. v. El Salvador, June 28, 2010, par. 131; I/A Court H.R., Case of Goiburú et al. Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. Par. 82; I/A Court H.R., Case of Gómez Palomino. Judgment of November 22, 2005. Series C No. 136. Par. 92; I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, paragraphs 100 to 106; I/A Court H.R., Molina Theissen Judgment, Reparations (Art. 63.1 of the American Convention on Human Rights). Judgment of July 3, 2004, Series C No. 108, par. 41.

<sup>112</sup> IACHR. Application to the Inter-American Court of Human Rights in Case No. 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, Bolivia, May 12, 2009, par. 106.

<sup>113</sup> Cf. *inter alia*, I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Merits, *Supra*, paras. 155 to 157; and Case of Osorio Rivera and Family v. Peru, *supra*, par. 31.

<sup>114</sup> I/A Court HR. Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 171; and Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 85.

<sup>115</sup> I/A Court HR. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 58; and IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, par. 167.

<sup>116</sup> I/A Court HR. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, par. 59; Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 85; and Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, par. 154.

<sup>117</sup> I/A Court HR. Case of the 19 Merchants. Judgment of July 5, 2004. Series C No. 109, par.154; I/A Court H.R., case of Bámaca Velásquez. Judgment of November 25, 2000. Series C No. 70, par.130; and IACHR, Report No. 44/00. Case 10,820. Américo Zavala Martínez. Peru. April 13, 2000, par. 41.

<sup>118</sup> I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, par. 188 and IACHR. Application to the Inter-American Court in case 12.529. Rainer Ibsen Cárdenas and José Luis Ibsen Peña v. Bolivia. May 12, 2009, par. 248.

<sup>119</sup> IACHR. Application to the Inter-American Court in the following cases: Renato Ticona Estrada et al. (12.527), paras. 153-165; Rosendo Radilla Pacheco (12.511), paras. 138-145; Kenneth Ney Anzualdo Castro (11.385), paras. 167-176; Julia Gómez Lund et al. (11.552), paras. 208-220; Florencio Chitay Nech (12.599), paras. 136/-146, Case 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, paras. 251-262; and Narciso González Medina et al. (11.324), paras. 138-149.

out.<sup>120</sup> This is because, apart from the fact that the disappeared person can no longer exercise and enjoy other rights, their disappearance seeks "not only one of the most serious forms of removing a person from every sphere of the legal system, but also to deny their very existence and leave them in a type of limbo or indeterminate legal situation in the eyes of society and the State."<sup>121</sup> The Commission considers the forced disappearance also entails a violation of the rights to judicial guarantees and judicial protection in respect of the disappeared victim, given the lack of actions to ascertain his or her whereabouts through effective investigations and the impossibility of filing appeals on her or his behalf given the State's denial that the person concerned is in its custody.

96. Forced disappearance of persons comprises the following concurrent, basic elements: (1) deprivation of liberty; (2) direct involvement of governmental officials or acquiescence thereof; and (3) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.<sup>122</sup> The Commission will next determine whether what happened to Luis Eduardo González González and Oscar Tassino Asteazu constitutes forced disappearances.

### **1. The disappearance of Luis Eduardo González González**

97. Regarding the first element, relating to deprivation of liberty in the case of Luis Eduardo González González, the IACHR considers that there is no dispute regarding the fact that he was detained on December 4, 1974. That is recorded in testimony of the alleged victim's next-of-kin, including his wife, who stated that she was arrested together with the alleged victim, as well as in the "Report by the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985." Furthermore, State officials did not deny the detention of the alleged victim; they claimed he had escaped from prison. Therefore the Commission regards this element as proven.

98. As for the second element, namely direct involvement of governmental officials or their acquiescence, the Commission points to a series of factors proving that the alleged victim was disappeared by State agents.

- The context surrounding the facts of the case, including systematic practice of extrajudicial executions.
- The testimony of the mother of the alleged victim, indicating that he had been detained by members of the Joint Forces; the testimony of other people detained in the 6th Cavalry Regiment, who said they had seen the alleged victim there, in physically and psychologically very poor shape; and the statement by his wife Elena Zaffaroni, who was detained with him and saw him having convulsions after being tortured by State agents.
- The report of the "Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985," which documented why this case is presumed to have been related to intelligence operations and stated that it is uncertain whether his remains were buried in the precincts of Battalion 1 Mec No. 13 or Battalion 1 Parach. No. 4.
- The Final Report on the Situation of Missing Persons and the Facts that Led to their Disappearance" of the Parliamentary Investigative Commission of the Chamber of Representatives, which identified Luis Eduardo González as one of the victims of forced disappearance in Uruguay between 1973 and 1978.

99. As regards the third element, concerning refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned, the Commission stresses that, according to the information available, when the alleged victim's mother went to look for him at Army Division No. 1, they told her he had escaped. The Investigative Commission stated that "an attempt was made to cover up his death with a press releases reporting that he had escaped." The IACHR points out that despite the versions of the Investigative Commission on the Ultimate Fate of 33 Citizens Detained, the alleged victim's whereabouts are still unknown.

<sup>120</sup> I/A Court HR. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, paragraphs 91-92, Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, par. 157.

<sup>121</sup> I/A Court HR. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 90. See also: IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, par. 166.

<sup>122</sup> IACHR. Report No. 111/09. Case 11,324. Merits. Narciso González Medina. Dominican Republic, November 10, 2009. Par. 130; and I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of Tuesday, September 22, 2009. Series C No. 202, par. 60.

On the contrary, failure to investigate the facts has functioned as a mechanism to cover up what happened or the whereabouts of the alleged victim, so that the IACHR considers this element proven as well.

## 2. The disappearance of Oscar Tassino Asteazu

100. With respect to Oscar Tassino Asteazu, the IACHR notes, with regard to the first element, that there is no disputing that he was detained on July 19, 1977. That is recorded in testimony of the alleged victim's wife, as well as in the "Report by the Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985." Therefore the Commission regards this element as proven.

101. As for the second element, the Commission considers that it has been shown that State agents took part in what happened, given the following factors:

- The aforementioned context surrounding the facts of the case.
- The testimony of the alleged victim's wife, who said she had been detained by three individuals dressed in civilian clothes who identified themselves as members of the Joint Forces.
- The report of the Peace Commission, which indicated that Oscar Tassino was a victim of forced disappearance and had died on July 21, 1977; and that his remains had been "buried in Armed Forces precincts."
- The Final Report on the Situation of Missing Persons and the Facts that Led to their Disappearance" of the Parliamentary Investigative Commission of the Chamber of Representatives, which identified Oscar Tassino Asteazu as one of the victims of forced disappearances in Uruguay between 1973 and 1978.

102. The Commission notes that although the Report by the "Investigative Commission on the Ultimate Fate of 33 Citizens Detained between June 27, 1973 and March 1, 1985" stated that the alleged victim's death was the result of suicide, that is not sufficient to rebut the above-mentioned elements, given the uncertainty of the information and the fact that that contradiction was not resolved in criminal proceedings conducted with due diligence, as pointed out below. Here, the IACHR points out that the same report states that it was not possible to determine how the alleged victim killed himself because no autopsy was performed," and that his remains were exhumed, taken to the grounds occupied by Battalion No. 14, and cremated, after which his ashes had been scattered in the vicinity.

103. As for the third element, the Commission recalls that State agents told the alleged victim's wife that she had not been detained and that he had been summoned to turn himself in, despite ample evidence showing that she had been detained by State agents. The Commission draws attention to the fact that issuing "wanted" notices for a person who was actually detained was a strategy deployed in certain cases to cover up the detainee's death, as pointed out by the Parliamentary Investigative Commission of the Chamber of Representatives. At the same time, the IACHR also notes the contradictions regarding the alleged victim's whereabouts. While the Report of the Investigative Committee mentioned in the foregoing paragraph stated that the remains of the alleged victim had been exhumed and taken to the grounds occupied by Battalion No. 14, according to the alleged victim's (Tr. wife?), on August 8, 2005, the Commander in Chief of the Army told President Tabaré Vázquez that his remains were buried in grounds occupied by Battalion No. 13, not 14. Nevertheless, the fate or whereabouts of the alleged victim are still not known. The Commission considers that the above elements show that State agents sought to deny the detention and had no intention of disclosing Oscar Tassino's fate or whereabouts.

## 3. Conclusion

104. In light of the above, the Commission concludes that Luis Eduardo González González and Oscar Tassino Asteazu were victims of forced disappearance. Given that those disappearances began before Uruguay ratified the American Convention and are still ongoing, the Uruguayan State violated the rights established in Articles XVII, XXV, and I of the American Declaration, Articles 3, 4.1, 5.1, 5.2, and 7 of the American Convention, in conjunction with Article 1.1 thereof, as well as Article 1.a of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Luis Eduardo González González and Oscar Tassino Asteazu.

**C. Right to justice (Article XVIII<sup>123</sup> of the American Declaration), right to judicial guarantees and judicial protection (Articles 8.1<sup>124</sup> and 25.1<sup>125</sup> of the American Convention) in conjunction with the obligation to respect human rights and the duty to adopt provisions under domestic law (Article 1.1 of the aforementioned instrument<sup>126</sup> and Articles I.b and I.d of the Inter-American Convention on Forced Disappearance of Persons.<sup>127</sup>**

105. The IACHR has stated that the right to justice contained in Article XVIII of the American Declaration is similar in its scope to the right to judicial protection contained in Article 25 of the American Convention and includes the right of any person to appear before a court when any of her or his rights have been violated, to obtain an investigation conducted by a competent, impartial and independent, as well as the right to obtain reparation for harm done.<sup>128</sup>

106. Incases relating to extrajudicial executions, such as forced disappearances, the IACD and the Inter-American Court have held that the State has an obligation to initiate, ex officio and without delay, a serious, impartial, and effective investigation by all lawful means available in order to determine the truth and to ensure the pursuit, capture, trial, and eventual punishment, where applicable, of all the authors of the facts<sup>129</sup>, especially when State agents are or may be involved.<sup>130</sup> This duty to investigate is one of means, not results, that must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective, or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>131</sup> The State's obligation to investigate [...] must be fulfilled diligently in order to avoid impunity and the recurrence of this type of event.<sup>132</sup>

107. At the same time, specifically with respect to forced disappearances, both the Court and the Commission have held that the response of the State is inevitably linked to the protection of the life and well-being (bodily integrity) of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an

<sup>123</sup> Article XVIII of the American Declaration of the Rights and Duties of Man establishes that: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

<sup>124</sup> Article 8.1 of the American Convention provides: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>125</sup> Article 25.1 of the American Convention provides: "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."

<sup>126</sup> Article 2 of the American Convention provides as follows: Duty to adopt measures under domestic law. 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.

Articles 8, 25 and 1.1 of the Convention were addressed in the foregoing section.

<sup>127</sup> Said Article establishes that the States Parties to the Convention commit to: b) Punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; (...); d) take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

<sup>128</sup> IACHR Report No. 71/15. Case 12,879. Merits. Vladimir Herzog et al. Brazil. October 28, 2015, par. 192; IACHR, Report No. 40/04, Case No. 12.053, Mayan Indigenous Community (Belize), Annual Report of the IACHR, 2004, par. 174; IACHR, Report No. 54/01, Case 12.051, Maria Da Penha Fernandes (Brazil), April 16, 2001, par. 37.

<sup>129</sup> I/A Court HR. Velásquez Rodríguez Case. v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, par. 177; Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 183.

<sup>130</sup> I/A Court HR. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, par. 156; and Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2013. Series C No. 270, par. 371.

<sup>131</sup> I/A Court HR. Velásquez Rodríguez Case v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, par. 177; Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, par.183.

<sup>132</sup> I/A Court HR. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006, Series C No. 148, par. 319; Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, par. 183; and Case of Landaeta Mejías Brothers et al v. Venezuela. Preliminary objections, Merits, Reparations, and Costs Judgment of August 27, 2014. Series C No. 281, par. 216.



immediate and exhaustive response is concerned. The Commission reiterates that “when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty.”<sup>133</sup>

108. Regarding judicial executions, the Commission underscores certain standards of the Minnesota Protocol, which sets out a number of basic procedures for performing due diligence: identification of the victim; recovery and preservation of evidentiary material related to the death to aid in any potential prosecution of those responsible; identification of possible witnesses and collection of statements from them concerning the death; determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; distinction between natural death, accidental death, suicide and homicide; identification and apprehension of the person(s) involved in the death; and bringing of the suspected perpetrator(s) before a competent court established by law.<sup>134</sup>

109. In addition, both the right to access to justice and the right to judicial guarantees establish that one of the elements of due process is that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Pursuant to that norm, the Commission will consider, in light of the specific circumstances of the case, the elements that the inter-American system has taken into account in its recent case-law, namely: (i) the complexity of the case; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities; and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>135</sup> The Inter-American Court has found that a prolonged delay may constitute, in itself, a violation of the right to a fair trial,<sup>136</sup> and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>137</sup>

110. Finally, the Commission reiterates that “the inadmissibility of amnesty provisions, statutes of limitation, and grounds for excluding liability aimed at impeding the investigation and punishment of those responsible for serious human rights violations such as torture, summary, extralegal, or arbitrary executions, and forced disappearances, all of which are prohibited for violating non-derogable rights recognized by international human rights law.”<sup>138</sup>

## 1. Due diligence in investigations of extrajudicial executions and forced disappearances

111. Regarding the extrajudicial executions of Silvia Reyes, Laura Raggio, and Diana Maidanik, the Commission points out that there is no record of the State having initiated ex officio investigations into their deaths on April 21, 1974, nor of it ordering even the minimum proceedings required in the event of a violent death at the hands of State agents, which were mentioned above. The only proceedings carried out and which appear in the file with the IACHR are certain statements by witnesses, a sketch, and photographs of the site

<sup>133</sup> IACHR. Report No. 111/09. Case 11,324. Merits. Narciso González Medina. Dominican Republic, November 10, 2009. Par. 225; I/A Court H.R. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, par. 134; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, par. 221; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs. Judgment of September 1, 2010. Series C No. 217, par. 167. See, also, Matter of Natera Balboa regarding Venezuela (Provisional Measures). Order of the Inter-American Court of Human Rights of February 1, 2010, preambular par. 13, and Matter of Guerrero Larez. Provisional measures regarding Venezuela. Order of the Court, Thursday, August 29, 2013, Whereas clause 16.

<sup>134</sup> I/A Court HR. *Case of Gutiérrez Hernández et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338. Par. 161.

<sup>135</sup> IACHR. Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, par. 100. I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

<sup>136</sup> I/A Court HR. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, par. 166; Case of Gómez Palomino v. Peru. Judgment of November 22, 2005. Series C No. 136, par. 85; Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, par. 160.

<sup>137</sup> I/A Court HR. Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, par. 142; IACHR, Report No. 133/17, Case 12.332, Merits. Margarida Maria Alves and family members. Brazil. October 25, 2017, par. 105

<sup>138</sup> I/A Court H.R., Case of Gelman v. Uruguay. Merits and Reparations. Judgment of 24, 2011. Series C No. 221, par. 225.

taken more than 30 years later. There is no record of the State having taken other steps to throw light on the deaths of the alleged victims or to move the case forward in any way.

112. Likewise, with respect to the disappearances of Luis Eduardo González González in December 1974, and Oscar Tassino Asteazu in July 1977, there is no record of the State having initiated any ex officio investigation even though it is clear that it knew of both disappearances, due to the complaints and effort to find the alleged victims by family members in the days following their disappearances. The above is especially serious, given that, faced with a disappearance, the State's response is supposed to be prompt and effective to prevent grave human rights violations against the disappeared person. Likewise, the Commission underscores that there is no record of the State having made any effort to investigate or search for the alleged victims.

113. Finally, the Commission points out that in the case of both disappearances competence disputes arose between the ordinary justice system and the military courts, which took some two years to be resolved, even though it is clear that cases of crimes involving human rights violations cannot be heard by the military authorities. In the case of Luis Eduardo González González the dispute started on September 24, 1985 and was resolved on February 16, 1987. In the case of Oscar Tassino Asteazu,, the dispute over competence began on September 24, 1985 and was resolved on February 18, 1987

## **2. Enforcement of the Expiry Law**

114. The Commission further notes that, in the three cases, after it was promulgated on December 22, 1986, the Expiry Law had the effect of preventing investigations into the facts, while attempting to ensure that they went unpunished. Following promulgation the alleged victims [Tr. next of kin of those who had died] brought unconstitutionality action against that law in 1987. However, all were rejected by the Supreme Court of Justice, citing its previous rulings. In all three cases, between 1988 and 1989, the judges handling those cases were notified that the cases had been included in the scope of the Expiry Law. In the case of Silvia Reyes, Laura Raggio y Diana Maidanik, investigations resumed in 2006, only to be closed down again when the case was shelved in 2007.

115. For its part, the State declared that investigations regarding the five alleged victims, in all three cases, are still current. Despite that assertion, the Commission stresses that, at various times, the Expiry Law constituted an obstacle to the investigations.

116. The IACHR considers it unnecessary to go further into the matter of the Expiry law, given that both the Constitution and the Court have already declared its incompatibility with the American Convention. Nevertheless, the IACHR does reiterate that its enforcement in all three cases being analyzed constituted crass failure by the State to meet its obligation to investigate and punish grave human rights violations and to adopt measures under domestic law to ensure that no regulatory obstacle prevents the investigation into said acts.

## **3. Reasonable time**

117. Finally, the IACHR again points out that the events relating to Silvia Reyes, Laura Raggio, and Diana Maidanik, and to Luis Eduardo González, occurred in 1974, and those relating to Oscar Tassino Asteazu in 1977. Nevertheless, today, more than 40 years later, they have still not been clarified. The IACHR deems it unnecessary to analyze each of the components of what constitutes a reasonable lapse of time, given that, as already mentioned, the delay stemmed from the fact that absolutely no effort was made to move investigations forward. On the contrary, they were obstructed through the Expiry Law.

## **4. Conclusion**

118. In light of the above, the Commission concludes that the State is responsible for violating Article XVIII of the American Declaration and Articles 8.1 and 25.1, in conjunction with Articles 1.1 and 2 of the American Convention, to the detriment of Silvia Reyes, Laura Raggio, and Diana Maidanik. In addition, the State is responsible for violating Articles 8.1 and 25.1, in conjunction with Articles 1.1 and 2, of the American

Convention, and Article I.b and I.c of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Luis Eduardo González González and Oscar Tassino Asteazu.

**D. Right to humane treatment of the next-of-kin (Article 5 in connection with Article 1.1 of the American Convention)**

119. The right to integrity of the person is enshrined in Article 5.1 of the American Convention, which provides “Every person has the right to have his physical, mental, and moral integrity respected.” Commission and the Inter-American Court have indicated that the next-of-kin of victims of certain human rights violations, such as extrajudicial executions and forced disappearances, may, in turn, be considered victims.<sup>139</sup> In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to those facts.<sup>140</sup>

120. In the instant case, the Commission considers that the mere fact of the extrajudicial executions and disappearances of the victims has triggered profound pain, anguish, and uncertainty in the family members, exacerbated by the violations described in the foregoing sections, including their long quest for justice and the lack of clarification of what happened to their loved one.

121. In light of the above considerations, the Commission concludes that the State is responsible for the violation of the right to mental and moral integrity established in Article 5.1 of the American Convention in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of the next-of-kin of Laura Raggio, Silvia Reyes, Diana Maidanik, Luis Eduardo González González, and Oscar Tassino Asteazu, identified in the present report.

**II. CONCLUSIONS AND RECOMMENDATIONS**

122. In light of the above findings, the Commission concludes that the State of Uruguay is responsible for violating the rights to juridical personality, life, humane treatment, personal liberty, judicial guarantees and judicial protection enshrined in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, to the detriment of the persons named in the course of this report. The Commission also finds that the State is responsible for violation of Articles I (a), (b), and (c) of the Inter-American Convention on Forced Disappearance of Persons. Finally, the Commission concludes that the State is responsible for violating Articles I, XVII, XXV, and CVIII of the American Declaration. By virtue of the foregoing conclusions,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF URUGUAY:**

1. Conduct a thorough, impartial, diligent and effective investigation within a reasonable period of time with a view to throwing full light on the facts, identifying all those responsible for perpetrating or instigating them, and imposing the corresponding punishments, Taking into account the seriousness of the violations found and inter-American standards in that respect, the Commission underscores that the State may not in invoke the principle of *non bis in idem*, *res judicata*, or the statute of limitations to justify failure to implement this recommendation.

2. With respect to the victims of forced disappearance, thoroughly, impartially, and effectively investigate their whereabouts and, where applicable, take all necessary steps to identify their remains and deliver them to family members in the manner they desire.

<sup>139</sup> IACHR. Report No. 11/10. Case 12,488. Merits. Member of the Barrios family. Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Par. 227; I/A Court H.R. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, par. 112; and Case of Bueno-Alves v. Argentina. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164, par: 102.

<sup>140</sup> I/A Court HR. Case of Vargas-Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, par. 96.

3. Make adequate reparation for the human rights violations shown in this report, both materially and morally, including just compensation, the establishment and dissemination of the historical truth of what happened, and implementing an adequate program of assistance to next-of-kin. The IACHR notes that, according to the State, the family members of the five victims received some reparation under Law 18.596. The Commission has no documentary evidence thereof, but considers that upon confirmation of such reparation, the State may take it into account when determining the amount of compensation to be paid as a result of the international liability declared in the present report.

4. Adopt legislative and other measures needed to ensure that in practice and through judicial rulings the imprescriptibility of grave human rights violations is guaranteed in accordance with inter-American standards. The State must guarantee that the Law on the Expiry of the Punitive Claims of State does not represent any obstacle for the investigation of the facts of the case.