**EDMUNDO CAMANA ET AL.,**

**PICHICHA AND ORÍFUNA PEOPLES**

***Victims***

**v.**

 **SANTA CLARA**

***State***

**MEMORIAL FOR THE REPRESENTATIVES OF THE VICTIMS**

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# STATEMENT OF FACTS

***History of Santa Clara***

Santa Clara is an independent State in the Americas, gaining its independence from Britain in 1828 and having a GDP and HDI comparable to that of Germany.[[1]](#footnote-1) Santa Clara, a member of the OAS, has acceded to the OAS Charter, deposited its ratification instrument for the *American Convention on Human Rights* (The *Convention*) and has accepted the contentious jurisdiction of the supranational Inter-American Court of Human Rights (IACtHR).[[2]](#footnote-2) All protocols concerning the Inter-American System of Human Rights (IASHR) have been ratified and it has signed the *UN Declaration on the Rights of Indigenous Peoples* among most other universal human rights treaties, and has ratified *Convention 169* of the International Labour Organisation.[[3]](#footnote-3)

Santa Clara has a population of 95 million, spread across a surface area of 9 million square kilometres, with 62% of its population identified as White, 23% as Hispanic, 7% as Afro-descendant, 3% as Asian immigrants and 5% as native people.[[4]](#footnote-4) The Pichicha people, an indigenous group, were estimated to have permanently settled on ancestral territory between the headwaters and middle valley of the Doce River, with only 150,000 members.[[5]](#footnote-5) Post-independence, in the 1990’s, Santa Clara expanded its extractive industries into other countries in the Americas, Africa and Asia. Eventually 80% of mining investments and 70% of all stocks in the mining industry in Latin America and the Caribbean were traded on the Toronga Stock Exchange in the capital of Santa Clara.[[6]](#footnote-6) In pursuit of expanding its mining companies in other countries, the government of Santa Clara created a Public Foreign Investment Fund in 1990, for the purpose of making subsidized loans primarily to mining companies to expand in foreign countries.[[7]](#footnote-7) The government of Santa Clara allocated US $40 billion to the fund, which primarily benefitted the principal mining companies Miningcorp S.A. and Silverfield S.A. who were able to access US $36 billion.[[8]](#footnote-8)

***Relations between Santa Clara and the Republic of Madruga***

South of Santa Clara is The Republic of Madruga who gained its independence in September 1837, having a GDP and HDI comparable to that of a developing Latin American country, and a population of 23 million people.[[9]](#footnote-9) The Orífuna people, descendants of enslaved Africans and native people, is an indigenous group who have permanently settled in the high valley and estuary of the Doce River.[[10]](#footnote-10) Like Santa Clara, the Republic of Madruga has signed and ratified all the human rights instruments of the Inter-American Human Rights System and recognized the contentious jurisdiction of the Inter-American Court in 1999.[[11]](#footnote-11) The Court has issued a total of 45 judgments and 25 orders of provisional measures against Madruga. The most recent annual report from the Court has also shown that 90% of the reparations measures ordered in those judgments were met with total non-compliance, 10% having been complied with in part and 99% non-compliance pertaining to investigation and non-repetition.[[12]](#footnote-12)

In the 1920’s Madruga faced an insurrection which led to a revolutionary government emerging that sought to promote agrarian reform and nationalize the extractive industry through legislation in 1929.[[13]](#footnote-13) This prompted the formation of militia groups in Northern Madruga which sought to continue the privatisation of extractive industries.[[14]](#footnote-14) In 1932, the Parliament of Santa Clara enacted legislation which enabled Santa Clara to provide military weapons and training to the rebel militia groups in Northern Madruga which was further endorsed publicly by a government official, the Secretary of Defense.[[15]](#footnote-15) Although it was repealed in 1940, mining companies from Santa Clara made periodic payments to militia groups that provided protection for their subsidiaries in Madruga.[[16]](#footnote-16) In 1995 Madruga reformed its agrarian system and promoted private investment in the mining and energy sector which saw the signing of The North American Free Trade and Development Agreement (NAFTA).[[17]](#footnote-17)

***Murders of the Camana Osorio family, impunity in Madruga and judicial appeals in Santa Clara***

Edmundo Camana, the President of the Madrugan Confederation of Mineworkers, was murdered along with his Teresa Osorio and two of their daughters in 1994, by two masked individuals in a restaurant in the city of San Blas.[[18]](#footnote-18) His only surviving daughter Ms. Lucia Camana, went to live in Santa Clara as a refugee until 1998 when she returned to Madruga.[[19]](#footnote-19) In June of 1999, the criminal proceedings concerning the murder were permanently shelved by the Judiciary of Madruga as they believed the sole perpetrators of the crime died in a confrontation between militia groups in 1995.[[20]](#footnote-20) In 2001 documents were leaked to the press which showed Miningcorp S.A’s subsidiary in Madruga as having made bank deposits to companies owned by two leaders of the Los Olivos militia group which implicated the current President of the Upper Chamber, Eliot Klein, as he was the financial director of Miningcorp S.A when the bank deposits were made.[[21]](#footnote-21) Mr Klein subsequently resigned from his position as President of the Upper Chamber in Santa Clara and no criminal charges were brought against him in Santa Clara, so as not to jeopardize the investigations in Madruga.[[22]](#footnote-22)

In Madruga a criminal money laundering investigation was launched against the two leaders of Los Olivos militia group but was closed due to the expiration of the criminal statute of limitations.[[23]](#footnote-23) An audit was also launched against Miningcorp S.A. however it was shelved a few weeks after the company initiated proceedings against Madruga before the NAFTDA Arbitral Panel.[[24]](#footnote-24) Human Rights organisations have highlighted an error in the calculation of the statute of limitations in relation to the offense of money laundering. These organizations have also emphasized that in the 1990’s alone, the militias have been involved in the deaths of over 500 social leaders, trade unionist and persons defending their territory in Northern Madruga without any member of the militia or mining company official being convicted.[[25]](#footnote-25)

On December 10, 2002, Lucia Camana, the main spokesperson of the National Movement against Impunity, was killed while delivering a speech in San Blas, by an unknown individual using a weapon and *modus operandi* similar to those used in the murder of the rest of her family in 1994.[[26]](#footnote-26) In 2004, Ms Camana’s grandparents were allowed to access the case file of the murder investigation. In that file, they found an official letter from the Consul of Santa Clara in San Blas which stated that the Constitution of Santa Clara prohibited the extradition of its nationals.[[27]](#footnote-27) Four years later in 2006, WikiLeaks published two cables from the Consul of Santa Clara in Madruga, which reported the suspension of David Nelson, a military attaché who held three meetings with members of the outlawed Los Olivos militia group at Miningcorp S.A’s office in San Blas.[[28]](#footnote-28) Subsequent to these new findings, Lucia Camana’s relatives requested the Office of the Prosecutor General of Madruga to extend its criminal investigation of Lucia’s murder to David Nelson. However, their request was denied as it was concluded that Mr. Nelson enjoyed immunity from prosecution as a result of his post.[[29]](#footnote-29)

After more than 5 years of the investigations remaining at the preliminary stage, the members of the Camana Osorio family brought civil and criminal actions in Santa Clara due to the five years without progress in Madruga.[[30]](#footnote-30) The Federal Courts and Civil Divisions of Santa Clara ruled all the claims inadmissible claiming that they would not have extraterritorial jurisdiction to hear them.[[31]](#footnote-31) The criminal claims were eventually deemed inadmissible by the Supreme Court of Santa Clara on May 3 2010, due to the 1994 murder case being shelved by the Madrugan authorities and the finding that it was outside of their scope to act as a supranational appeals Court concerning the 2002 murder case.[[32]](#footnote-32) The civil claim was permitted as the Supreme Court found that the State did have extraterritorial jurisdiction over the matter and the claimants agreed to a US $150,000 settlement from Miningcorp S.A in September of 2010.[[33]](#footnote-33) The relatives of Edmundo Camana, Teresa Osorio and their children then submitted a petition to the IACHR in March 2011, concerning the previously filed criminal complaints for the murders of 1994 and 2002.[[34]](#footnote-34)

***The Wirikuya Project and the Indigenous peoples***

In January 2007, Santa Clara sought to develop the Wirikuya project which was an open pit gold and silver mining project to be done exclusively in Santa Clara, but affecting the Doce River which flowed through more than 300 kilometres of Madrugan territory.[[35]](#footnote-35) Both the Pichicha people in Santa Clara and the Orífuna people in Madruga were identified as indigenous groups that would be affected by the Wirikuya project.[[36]](#footnote-36) The Office of the Undersecretary for Intercultural Affairs engaged in a detailed three-year consultation process with the Pichicha authorities.[[37]](#footnote-37) In November 2010, the Pichicha people agreed to the project with one of the conditions being the prohibition of the entry of mining company employees into the area surrounding the Mandí Stream, which was a religious site of the Pichicha people.[[38]](#footnote-38) All conditions were agreed to by the authorities of Santa Clara. The Pampulla Lagoon was contaminated as a result of work on the Wirikuya project and as a result, the Federal Water Authority of Santa Clara (FWA) ordered the collection of water from the Mandí Stream, claiming it was a warranted restriction of the Pichicha people’s property rights.[[39]](#footnote-39) An amparo filed by the Pichicha people on July 30, 2011 saw an injunction being granted for the evacuation of civil defense personnel from the Mandí Stream, only for it to later be shelved on August 20, 2011 as the situation causing the infringement came to an end.[[40]](#footnote-40) An appeal seeking compensation for the irreparable damage to the religious site was deemed inadmissible in November of 2011 and so in January 2012, a petition was filed with the IACHR.[[41]](#footnote-41)

From May 2007 Santa Clara began discussing the Wirikuya project with Madrugan authorities, assuring them that there was no possibility of the indigenous or tribal people being affected by it.[[42]](#footnote-42) This was merely translated to the Orífuna language by Silverfield S.A. and placed on the company’s website rather than effectively communicated to the Orífuna people.[[43]](#footnote-43) Decisions regarding territorial rights had to be decided by each of the 25 communal landholdings of the Orífuna people.[[44]](#footnote-44) The Orífuna People’s Assembly (OPA) rejected the Wirikuya project claiming a lack of prior consultation.[[45]](#footnote-45) Silverfield S.A. created a trust fund for development projects benefitting the Orífuna people in July 2011 of more than US $50 million and in August 2011, 13 of the 25 presidents signed a document permitting Silverfield S.A. to use the Doce River and the Port of San Blas in August 2011.[[46]](#footnote-46) An amparo was filed in Madruga by the OPA, concerning the lack of consultation and the Human Rights Clinic of the University of Toronga filed an action in Santa Clara to nullify the license for the Wirikuya project in Madruga.[[47]](#footnote-47) The first claim was declared inadmissible in December of 2011 and the second was ruled to be unfounded in January of 2012.[[48]](#footnote-48) In February 2012, the Human Rights Clinic of Toronga filed a petition with the IACHR against Santa Clara concerning the lack of prior consultation.[[49]](#footnote-49)

In March 2014, the IACHR found that Santa Clara had violated Articles 4, 5, 8, 16, 17 and 25 of the *Convention* with regard to the deceased members of the Camana Osorio family.[[50]](#footnote-50) It found Santa Clara to also have violated Article 5.1 of the *Convention* in relation to the immediate relatives of the Camana Osorio family.[[51]](#footnote-51) The IACHR, also found Santa Clara responsible for the violation of the rights enshrined in Articles 5, 8, 21, 25 and 26 of the *Convention*, with regard to the Pichicha people,[[52]](#footnote-52) and Articles 8 and 25 of the Convention concerning the Orífuna people.[[53]](#footnote-53) Concerning admissibility, the State of Santa Clara claimed that the IACHR lacked jurisdiction with respect to the two petitions arising out of incidents occurring in Madruga.[[54]](#footnote-54) Santa Clara found the IACHR decision on the merits to be legally groundless and in November 2014, submitted a letter to the IACHR communicating their non-compliance with the recommendations, which led to the case being submitted to the IACtHR by the IACHR.[[55]](#footnote-55)

# 3. LEGAL ANALYSIS

## 3.1 Statement of Jurisdiction

The Inter-American Court on Human Rights (hereinafter “The Court”) has jurisdiction to hear this case, as the State of Santa Clara (hereinafter “Santa Clara”) has ratified the *American Convention on Human Rights* (hereinafter the “*Convention”* or “*ACHR*”), *[[56]](#footnote-56)* and accepted the contentious jurisdiction of the Court in February 1980.[[57]](#footnote-57) Therefore, pursuant to Articles 61[[58]](#footnote-58) and 62[[59]](#footnote-59) of the *ACHR* Santa Clara authorises the Court to adjudicate on all matters concerning the application and interpretation of the *Convention*.

## 3.2 Admissibility

### ***3.2.1 Preliminary objection of alleged lack of territorial jurisdiction of the Inter-American******Commission in relation to events that took place in Madruga***

Article 45 of the *ACHR[[60]](#footnote-60)* grants the Commission jurisdiction on all matters relating to the interpretation of the *Convention*. However, in its arguments, Santa Clara asserted that the Inter-American Commission of Human Rights lacked territorial jurisdiction with respect to the events that took place in Madruga.[[61]](#footnote-61) The Commission through the *Victor Saldaño v. Argentina[[62]](#footnote-62)* and *US Interdiction of Haitians on the High Seas[[63]](#footnote-63)*casesreiterates that State Parties to the *Convention* are obligated to respect and guarantee the rights enshrined to all persons whether within the State’s territory or extraterritorially.

In the *Victor Saldaño v. Argentina* case, the Commission found that “jurisdiction” within Article 1(1) of the *ACHR* was not limited to national territory and could be extraterritorially applied. This meant that under “certain circumstances a State Party could be responsible for the acts and omissions of its agents which produced effects extraterritorially.”[[64]](#footnote-64) The Commission also recognised that Article 1 of the *ACHR* was largely patterned after Article 1 of the European Convention on Human Rights which interpreted “jurisdiction” extraterritorially.[[65]](#footnote-65) In the *US Interdiction of Haitians on the High Seas[[66]](#footnote-66)* case the Commission further explained that the *ACHR* could only be applied extraterritorially if there was a “foreseeable risk of death.”[[67]](#footnote-67)

In this present case, the Commission has the competence and the requisite extraterritorial jurisdiction to hear the case, as Santa Clara, a State Party to the *ACHR,* facilitated a *“*foreseeable risk of death*”* in Northern Madruga.

## *3.2.2 The Exhaustion of domestic remedies by the Representatives of the Victims*

Pursuant to both Article 46(1) of the *Convention* and the *Commission’s Statute*[[68]](#footnote-68) in the Inter-American System, Petitioners are required to ensure that their petitions are admissible. This means that remedies under domestic law should be pursued and exhausted in accordance with generally recognised principles of international law.[[69]](#footnote-69) However Article 46(2)(a) of the *ACHR* states that domestic remedies need not be exhausted if domestic legislation does not afford due process of law for the protection of the right violated.[[70]](#footnote-70) This means that where there is no remedy for the alleged wrong or if the remedy does not function as it should, then there is no need to satisfy Article 46(1)(a).[[71]](#footnote-71) In the present case, the remedies given to the Camana Osorio family, the Pichicha people and the Orífuna people did not function as they should, as they were inadequate and ineffective in keeping with the *Velásquez Rodríguez[[72]](#footnote-72)* case.

In the *Velásquez Rodríguez* case, the Court determined that any remedy that did not suitably address the right infringed was inadequate.[[73]](#footnote-73) It also determined that any remedy that was incapable of producing the result for which it was designed was ineffective.[[74]](#footnote-74) In relation to the Camana Osorio family, Santa Clara’s lack of interest to effectively investigate,[[75]](#footnote-75) shelved actions,[[76]](#footnote-76) and the Camana Osorio family’s inability to invoke remedies normally available to others,[[77]](#footnote-77) means that Article 46(2)(a) is applicable.

Furthermore, according to Article 46(2)(c) of the *ACHR*, the Camana Osorio family need not exhaust domestic remedies if there was an unwarranted delay between the occurrence of the events and a final judgment being rendered. In the case of *Baldeón-García Cruz v. Perú*,[[78]](#footnote-78) the Court found that a delay of 15 years between the occurrence of the events and judicial proceedings was unwarranted and unreasonable.[[79]](#footnote-79)In relation to Edmundo Camana, Teresa Osorio and their two children, there was a delay of 16 years between their murders and the judgment rendered in the criminal action.[[80]](#footnote-80) This surpasses the delay in *Baldeón-García* *Cruz* by 1 year. In relation to Lucia Camana, there was a delay of 8 years between her murder and the judgment rendered in the criminal action.[[81]](#footnote-81) Though 6 years shy of the delay in *Baldeón-García Cruz*, in the case of *Mangas v. Nicaragua*[[82]](#footnote-82)the Commission determined that a delay of 5 years between the filing of charges and the rendering of a final judgment went “beyond the limits of reasonability”.[[83]](#footnote-83)It is therefore submitted that Article 46(2)(c) is applicable as the delay experienced in both instances was unreasonable and unwarranted.

In relation to the Pichicha People, with the violation of several fundamental rights as a result of the Wirikuya Project in their territory, a petition for an amparo for protection of these non-derrogable rights was filed.[[84]](#footnote-84) However, it was shelved in place of an injunction, an inadequate remedy to protect such rights and thus it could not effectively address the rights infringed.[[85]](#footnote-85) The Inter-American Court on Human Rights in an advisory opinion[[86]](#footnote-86) stated that such judicial remedies as amparos were to be considered appropriate and effective remedies to protect non-derrogable rights as listed in Article 27.[[87]](#footnote-87) The Court also stated that any suspension of this remedy would be incompatible with the *Convention.*[[88]](#footnote-88) As such, the shelving of the amparo action[[89]](#footnote-89) was incompatible with the *ACHR*, and the remedy given to the Pichicha people (an injunction) was inadequate as it could not give the relief sought. Therefore Article 46(2)(a) of the *ACHR* applies in relation to the Pichicha people.

In relation to the Orífuna people, the action for nullity filed in Santa Clara was ruled to be “unfounded” as the Supreme Court of Santa Clara claimed prior consultation on foreign policy was not regulated in its domestic law.[[90]](#footnote-90) According to Article 46(2)(a) of the *ACHR*, if there is no remedy that corresponds with the alleged wrong then domestic remedies need not be exhausted. In this case Santa Clara provided no remedy in its domestic legislation to address the wrong alleged by the Orífuna and thus the requirement under Article 46(2)(a) has been satisfied.

## 3.3 Santa Clara has violated Articles 4, 5, 16, 17, 8, and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2 in respect of Edmundo Camana and his family

### *3.3.1 Article 4- Violation of the Right to Life in respect of Edmundo Camana and his family*

Article 4(1) of the *ACHR*[[91]](#footnote-91) provides that every person has the right to have his or her life respected, protected by the law and to not have his or her life arbitrarily deprived. As citizens of a State Party to the *ACHR*, Edmundo Camana, Teresa Osorio and their children, were to be afforded this right from conception.[[92]](#footnote-92) State Parties under this *ACHR* are not only obligated to refrain from behaviour that deprives life but to ensure that it engages in behaviour that positively and actively protects life. Additionally States must adopt legislative, administrative and judicial measures to safeguard the right to life, while creating mechanisms for effective investigations into any allegations of the violation of the right to life. [[93]](#footnote-93) If a State fails to comply with these obligations whether by way of action or omission it is held to be in violation of the right to life.

In keeping with the extraterritorial application of the *ACHR* as mentioned above, it is submitted that Home States of transnational corporations (hereinafter “TNC”) have obligations under international law in certain situations to regulate the extraterritorial activities their corporations.[[94]](#footnote-94) Failure to do so would incur international responsibility.

Article 16 of the ILC *Draft Articles[[95]](#footnote-95)* provides that where a State aids or assists another State in the commission of an internationally wrongful act, with knowledge of the circumstances of the act and where the act would be internationally wrongful if committed by that State, the assisting State is internationally responsible for doing so. Thus where a Home State has “sufficient knowledge” that its funding of a TNC, aids that TNC in committing an internationally wrongful act in a Host State, the Home State has a duty to prevent and mitigate the risk.[[96]](#footnote-96) Failure to do so would not only result in the Home State being held responsible for the internationally wrongful act, but also responsible for a breach in the obligation to exercise due diligence.[[97]](#footnote-97) In the African Commission on Human Rights case of *SERAC v. Nigeria,*[[98]](#footnote-98)permissible by virtue of Article 29 of the *ACHR,* the State failed in its obligation to exercise due diligence to protect human rights because its acts and omissions enabled a TNC to engage in internationally wrongful acts. Additionally this duty to exercise due diligence in relation to transnational corporations would be owed extraterritorially in the *ACHR* as discussed previously in the *Victor Saldaño v Argentina[[99]](#footnote-99)* and *US Interdiction of Haitians on the High Seas[[100]](#footnote-100)* cases.

In this present case, Santa Clara the Home State, created the Public Foreign Investment Fund (hereinafter “PFIF”) in 1990[[101]](#footnote-101) to fund extractive projects. Miningcorp S.A, a Santa Claran TNC, was a beneficiary, accessing 90% of this fund.[[102]](#footnote-102) The State of Santa Clara had sufficient knowledge that the TNC Miningcorp S.A, had a history of funding the training and provision of weapons to militias groups in Northern Madruga[[103]](#footnote-103) and that the creation of the PFIF and Miningcorp S.A’s subsequent access to it, coincided with the murders of over 500 social leaders and trade unionists,[[104]](#footnote-104) including Edmundo Camana.[[105]](#footnote-105) The State of Santa Clara in light of this had the duty to prevent and mitigate risk, however it failed. This failure resulted in its violation of the right to life of Edmundo Camana and his family. Additionally, Santa Clara, failed in its obligation to exercise of due diligence,[[106]](#footnote-106) as its act of funding, and its omission in periodically reviewing of how loans from the PFIF were by the borrower corporations,[[107]](#footnote-107) enabled a TNC to engage in internationally wrongful acts.

Furthermore Santa Clara, like the State of Colombia in the *Pueblo Bello Massacre v. Colombia*[[108]](#footnote-108)case, used its power and authority to enact legislation which posed a “foreseeable risk of death” and allowed militias to act legitimately with the enacting of the *Hemispheric Security Act.*[[109]](#footnote-109)Despite eventually repealing this legislation, Santa Clara, through Miningcorp S.A continued funding the activities of the militias to protect their investments in Northern Madruga creating a “foreseeable risk of death” as seen in the *US Interdiction of Haitians on High Seas[[110]](#footnote-110)* case. This is the risk that Edmundo Camana, who had led campaigns alerting the public to the potential links between mining companies and the murders of trade unionists by militias,[[111]](#footnote-111)and his family faced. Even if the murders were not directly committed by the Los Olivos militia group which it funded, Santa Clara was crucial in the formation of other militia groups[[112]](#footnote-112) and financing Madrugan ministries which promoted the culture of impunity.[[113]](#footnote-113)

Additionally in 2001 documents were leaked showing that Miningcorp S.A, under the financial direction of Eliot Klein, had funded militia groups in Northern Madruga from 1990-1998; the same period in which the PFIF was created and Edmundo Camana, Teresa Osorio and their two children were killed. Despite this evidence Santa Clara failed to investigate effectively the possible links between the three events. Similarly, with respect to the murder of Lucia Camana in 2002, Santa Clara failed to effectively investigate the link between the weapon and *modus operandi* used in her murder and the murders of her relatives in 1994.[[114]](#footnote-114) Santa Clara also failed to investigate Colonel David Nelson, a Deputy Military Attaché of Santa Clara to Madruga’s Embassy, and his meetings with Los Olivos in Miningcorp S.A’s offices in San Blas which coincided with her murder.[[115]](#footnote-115) These meetings were not overt and in keeping with the duties and responsibilities of a military attaché to a foreign country’s embassy.[[116]](#footnote-116) Thus Santa Clara has violated the right to life with respect to the Edmundo Camana and his family in conjunction with Articles 1(1) and 2 of the *ACHR*.

### *3.3.2 Article 5- Violation of the Right to Humane Treatment in respect of Edmundo Camana and his Family*

Article 5(1) and (2) of the *Convention*[[117]](#footnote-117) recognizes that “every person has the right to have his physical, mental, and moral integrity respected.” In the case of *Baldeón- García v. Perú,[[118]](#footnote-118)* when looking at what constituted mental and moral integrity, the Court looked at the victim’s age, the manner in which the victim was subsequently killed, and “the uncertainty over the outcome of the victim’s detention in the face of systematic pattern of extrajudicial executions.”[[119]](#footnote-119) In this present case, the public manner in which Edmundo Camana, Teresa Osorio and their two children were executed in a restaurant in the capital city[[120]](#footnote-120) violated their right to mental and moral integrity. The same can be said specifically for Lucia Camana, who was also murdered by a similar weapon and *modus operandi* used in the murders of her relatives in 1994[[121]](#footnote-121) while delivering a speech at an anti-impunity movement in front of two million people in the capital city.[[122]](#footnote-122) As such with Miningcorp S.A’s actions attributable to Santa Clara as previously stated, Santa Clara violated their right to humane treatment.

### *3.3.3 Article 5.1- Violation of the Right to Humane Treatment in respect of the immediate relatives of Edmundo Camana and his family*

Article 5(1) of the *American Convention,*[[123]](#footnote-123) not only recognizes the right to have the victim’s physical, mental, and moral integrity respected but also that of the victim’s family.[[124]](#footnote-124) In the case of *Gomez Palomino v. Perú,[[125]](#footnote-125)* the Court held that the victim’s siblings’ rights to humane treatment were also violated as they had experienced pain and suffering as a result of their relative’s disappearance from the subsequent acts or omissions of the State.[[126]](#footnote-126) The Court often looks at the surrounding circumstances of the violation, particularly the manner in which the individual was killed, the deep bond the victims shared with their family and the obstacles the family faced in uncovering the truth.[[127]](#footnote-127)

In relation to this present case, the immediate relatives of Edmudo Camana and his family have lost five family members at the hands of a militia group[[128]](#footnote-128) directly assisted by Santa Clara through Miningcorp S.A. Therefore, it is reasonable that the immediate relative of Edmundo Camana and his family family, not only experienced emotional distress and mental anguish because of the passing of their relatives and the arduous process to unearth truth, but also the fright from living in the same community where the murders took place. As such it can be reasonable to say that the right to humane treatment in respect of the immediate relatives of Edmundo Camana and his family has been violated by Santa Clara.

### *3.3.4 Article 16- Violation of the Right to Association in respect of Edmundo Camana and his Family*

The *Convention* provides that individuals are free to associate for ideological, religious, political, economic, social, and cultural, sports or other purposes.[[129]](#footnote-129) In the case of  [*Cantoral-Huamaní and García-Santa Cruz v.*](https://www.google.tt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwjC_P_i587KAhXCdx4KHV6TCs4QFggmMAE&url=http%3A%2F%2Fwww.corteidh.or.cr%2Fdocs%2Fcasos%2Farticulos%2Fseriec_167_ing.pdf&usg=AFQjCNHrMcUCvR90V6uuwaXBAkPF7mmMoA&sig2=87a9Ie5G-FwwxwAb7cfsmQ&bvm=bv.113034660,d.dmo) *Perú,*[[130]](#footnote-130) the Court found that “exercise of the right to freedom of association in relation to trade unions could be motive for attack.”[[131]](#footnote-131) The Court also said that the *ACHR* imposed the positive duty on the State to guarantee that people could exercise their freedom of association without fear that they will be subjected to any violence.[[132]](#footnote-132)

In applying this principle to the present case, it is clear that Edmundo Camana’s position as the President of the Madrugan Confederation of Mineworkers and Lucia Camana’s as a human rights defender and spokesperson for the National Movement against Impunity, naturally attracted the Right of Association as well as motive for their murders. The murder of Edmundo Camana and his family in such a public manner would have been aimed at dismantling this Confederation in order to ensure the security of the private mining sector, without any opposition. Likewise Lucia’s, murder in such a public manner would have instilled fear in those standing against impunity, forcing persons of a similar status into silence. Thus Santa Clara was in violation of this right as it failed to act positively and prevent violence against groups such as the Confederation of Mineworkers and human rights defenders.

### *3.3.5 Article 17- Violation of the Right to Family in respect of Edmundo Camana and his Family*

The family unit, under the *ACHR* is entitled to protection by the State as it is a fundamental societal element that deserves protection.[[133]](#footnote-133) In the case of *Chitay Nech et al. v. Guatemala,[[134]](#footnote-134)* the Court recognised that a child had a right to live with his or her family and not be separated from them.[[135]](#footnote-135) Thus a separation of a child from his or her family was a violation of the *Convention* rights.[[136]](#footnote-136) With respect to Lucia Camana whose family was murdered when she was 17[[137]](#footnote-137) and who had to flee to Santa Clara as a refugee, her right to family was violated.[[138]](#footnote-138) Considering the *Chitay Nech et al. v. Guatemala,* and the fact that the murders of the Edmundo Camana and his family are attributable to Santa Clara, the State violated the right to family.

### *3.3.6 Articles 8 and Article 25- Violation of the Rights to Fair Trial and Judicial Protection in respect of Edmundo Camana and his Family*

Article 8(1) of the *ACHR[[139]](#footnote-139)* sets forth that “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.”[[140]](#footnote-140) By virtue of Article 1(1) of the *Convention[[141]](#footnote-141)* this also means that all State Parties to the *Convention* have an obligation to effectively investigate serious violations of the *Convention* as well as to prosecute those responsible for the violations.[[142]](#footnote-142) Neglect and failure to do so by the State would result in the State violating the victim’s right to a fair trial.[[143]](#footnote-143) Central to this is the right to a hearing within a reasonable time. The Court, through the case of *Baldeón-García v. Perú,[[144]](#footnote-144)* has developed three elements to determine reasonableness.[[145]](#footnote-145) First the complexity of the matter; second the procedural activities carried out by the interested party; and the conduct of judicial authorities.

In *Baldeón-Garcia v. Perú*, the Court considered that it was not a complex case, as it only involved one victim, who had been identified and had sufficient grounds to conduct criminal proceedings, and where there was no objection to jurisdiction.[[146]](#footnote-146) In this present case involving Edmundo Camana and his family, it can be reasonable to say that it is a complex one, as it involves more than one victim, with state responsibility being applied extraterritorially.[[147]](#footnote-147) In dealing with the second element of reasonableness, the Court in *Baldeón-Garcia* identified that the submission of various complaints to State authorities by Mr Baldeón-Garcia’s family, on the lack of progress on proceedings, were procedural activities.[[148]](#footnote-148) In this case the relatives of Edmundo Camana, his wife and children, have actively carried out activities, such as calling for an expansion of the criminal investigation and filing both criminal and civil actions before the Supreme Court of Santa Clara.[[149]](#footnote-149) Concerning the third element of reasonableness, the conduct of judicial authorities, the Court in *Baldeón-Garcia v Peru* stated that the “reasonableness of that time must be assessed in relation to the total time demanded by criminal proceedings.”[[150]](#footnote-150) Here, the Court held the delay to be unreasonable as 15 years had gone by between the occurrence of the events, and the judicial proceedings, which were still at the enquiry stage and thus amounted to a violation of the due process of law.[[151]](#footnote-151) Since the murder of Edmundo Camana and his family in 1994, there has been excessive delay in the investigation. It has been 16 years since the murders of the Camana family and 8 years since that of Lucia Camana, without an effective remedy as stated previously.

In the case of *Baldeón-García v Perú,[[152]](#footnote-152)* the Court found that the lack of an effective remedy and the denial of justice to the family of the deceased victim was evidence of impunity.[[153]](#footnote-153) In this present case, Santa Clara has both denied justice and forgone an effective remedy in favour of impunity. It has been well-established through the *US Interdiction of Haitians on High Seas* case,[[154]](#footnote-154) that as a State Party to the *ACHR*, Santa Clara had an extraterritorial obligation to investigate, provide a fair trial and to give an effective remedy to the relatives of Edmundo Camana and his family. With respect to Army Coronel David Nelson, a deputy attaché who engaged in “unofficial acts” which did not attract functional immunity,[[155]](#footnote-155) Santa Clara promoted impunity by protecting him under the guise of functional immunity, and by claiming prematurely that its Constitution prohibited the extradition of citizens. Santa Clara has therefore violated its obligations under Articles 1 and 3 of the *Inter-American Convention on Extradition,[[156]](#footnote-156)* and Article 1(1) of the *ACHR*, in keeping with Article 27 of the *VCLT.[[157]](#footnote-157)*

Article 25 of the *Convention*[[158]](#footnote-158) sets forth the right to judicial protection. This means that everyone should be afforded the right to “simple and prompt recourse, or any other effective recourse.” The Court has maintained that the State’s obligation is not just to provide a judicial remedy, but rather the State’s obligation is a positive one whereby the State has to ensure that the remedy is “truly effective to establish whether or not there has been a human rights violation and to provide reparation.”[[159]](#footnote-159) In this case the lack of remedy provided by the State of Santa Clara, is deemed ineffective and inadequate as it does not suitably address the fact that Santa Clara assisted Miningcorp S.A in the commission of an internationally wrongful act, has not done a proper investigation into Miningcorp S.A’s links to the murders, and still uses extradition as a mechanism to ensure the impunity of the accused. Furthermore the compensation settlement provided by Miningcorp S.A is nominal only representing 4.16% of the US $36 billion accessed by Miningcorp S.A through the Public Foreign Investment Fund[[160]](#footnote-160) and cannot address the wrongs done.

## 3.4 Santa Clara has violated Articles 5, 8, 21, and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2 in respect of the Pichicha people.

### *3.4.1. Article 5- Violation of the Pichicha people’s Right to Humane Treatment*

Article 5(1) of the *Convention[[161]](#footnote-161)* states that every individual has a right to have his physical, mental and moral integrity respected.[[162]](#footnote-162) Indigenous people have rights to protection, maintenance and development of their culture and religion.[[163]](#footnote-163) These rights are enshrined in the *UN Declaration on the Rights of Indigenous People*, which the State of Santa Clara has signed.[[164]](#footnote-164) The fact that they signed on to the declaration requires their adherence to it based on the *pacta sunt servanda* principle found in the *VCLT*.[[165]](#footnote-165) In the case of *Xákmok Kásek Indigenous Community v. Paraguay*, the Court held that the failed restoration of ancestral lands, gradual loss of culture, ineffective administrative procedure, wretched living conditions, and the situation of abandonment created by the State of Paraguay violated Article 5(1).[[166]](#footnote-166) In the present case the environmental law principles of sustainable development[[167]](#footnote-167) and inter-generational and intra-generational equity[[168]](#footnote-168) are most prominent. The authorities of Santa Clara agreed to the conditions imposed by the indigenous group, in particular, the prohibition of the entry of mining company employees into the area surrounding the Mandí Stream, which is used as a religious site by Pichicha priests.[[169]](#footnote-169) After the rupture of a small containment dam and the contamination of the Pampulla Lagoon, the Mandí Stream was used for the provisional collection of water, against the agreed upon conditions.[[170]](#footnote-170) As can be seen by the agreement between the Pichicha People and Silverfield SA, the concern was not the Mandí Stream but the religious sites surrounding it.[[171]](#footnote-171) There was therefore a grave violation of Article 5(1) as irreparable harm was caused to these religious sites and the breach of this agreement by Santa Clara directly violated the Pichicha people’s rights to humane treatment, of which human dignity is integral.[[172]](#footnote-172)

The irreparable harm caused to the religious sites near the Mandí Stream, together with the contamination of the Pampulla Lagoon amount to gross violations of Santa Clara’s obligations under international environmental law concerning the principles of sustainable development and inter-generational and intra-generational equity.

***3.4.2 Article 8-Violation of the Right to Fair Trial in respect of the Pichicha people***

In the case of *Maria Da Penha v. Brasil*, the Court highlighted that this right is extended to the victim as well as the accused, which means that both may invoke a violation of it under the proper circumstances.[[173]](#footnote-173) In an Advisory Opinion of the Court it was noted that the amparo is a simple and prompt remedy designated for the protection of all rights recognised.[[174]](#footnote-174) This right is more concerned with the procedural nature of laws. A writ of amparo was filed on behalf of the Pichicha people after the breach of the government agreement concerning the Mandí Stream. It must be noted that the Latin-American amparo is not merely a writ or judicial protective order, but a whole judicial proceeding.[[175]](#footnote-175) This writ is aimed at the effective protection of constitutional rights violated, regardless of whether the person who produced such a violation is a public or private authority.[[176]](#footnote-176) Though the injunction was granted, it was lifted after the situation causing the issue came to an end and the amparo action shelved.[[177]](#footnote-177) The entire proceeding ought to have been processed based on a writ of amparo being a full judicial proceeding and not merely a protective order. When this decision was appealed, the Supreme Court held that an amparo claim served the sole purpose of restoring a fundamental right and was not a suitable mechanism for asserting compensatory claims, thus deeming the appeal inadmissible.[[178]](#footnote-178) The fact that Santa Clara did not fully process the amparo proceeding, and the unjust dismissal of the subsequent appeal, amount to a breach of the right to a fair hearing by Santa Clara.

***3.4.3 Article 21-Violation the Right to Property in respect of the Pichicha people***

This right to property, as enshrined in the *Convention*, speaks to the right to enjoy and use property. It must first be noted that the *Mayagna (Sumo) Awas Tingni Community* case showed that indigenous people enjoy communal property rights.[[179]](#footnote-179) It was through using an evolutionary interpretation that the Court found that property rights include the rights of members of the indigenous communities within the framework of communal property.[[180]](#footnote-180) The Mandí Stream, a religious site of the Pichicha people was ordered by the FWA to be used for the provisional collection of water, and this was deemed as a warranted measure due to the fact that it was an emergency situation.[[181]](#footnote-181) However, it is settled in *Convention 169* of the ILO that governments shall consult indigenous or tribal peoples whenever they are considering legislative or administrative measures that may affect them.[[182]](#footnote-182) It also states that consultations must be conducted “in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”.[[183]](#footnote-183) In the case of the *Saramaka People v. Suriname* the Court established several criteria that are necessary for prior consultation to take place. It noted that effective participation of all members in the decision making process, the provision of some sort of benefit resulting from the plan and the need to perform a prior environmental and social impact assessment are all essential factors.[[184]](#footnote-184) Santa Clara has ratified *Convention 169* of the ILO and although they would have effectively consulted the Pichicha peoples prior to the commencing of the Wirikuya project, they did not consult them before the FWA decided to forcibly acquire the Mandí Stream for the purpose of water collection. They therefore violated their obligations to ILO 169 and could not have fallen under the limits put forward in the *Convention.* It is recognised that it was necessary to balance the need for water, together with the rights of the indigenous people. However there was no such balancing act conducted by the State of Santa Clara. Thus it is posited that had consultation been properly done, the access would have been granted to the Mandí Stream in such a way so as to prevent the irreparable harm being done to the religious sites. Thus the lack of consultation led to the violation of property rights which in turn led to irreparable harm to the religious sites. Santa Clara stated that the restriction of property rights was warranted based on the emergency that was at hand.[[185]](#footnote-185) This may appear to be an attempt to invoke the principle of necessity by the authorities of Santa Clara. According to Article 25 of the *ILC Draft Articles*,[[186]](#footnote-186) the first necessary element for a State to invoke necessity is where its action is the only way for the State to safeguard an essential interest against a grave and imminent peril.[[187]](#footnote-187) Article 29 of the *Convention* enables the use of sources of law outside of the Inter-American System and on that note it is helpful to draw on the ICJ decision in the case concerning the *Gabcikovo-Nagymaros* project. In this case Hungary sought to rely on the principle of necessity due to the possibility of ecological harm, in order to relieve itself of its contractual obligations to Slovakia.[[188]](#footnote-188) The ICJ held that although the ecological threats were serious, they could not alone establish the objective existence of a peril, much less a peril which was grave and imminent.[[189]](#footnote-189) On this first ground alone, the State of Santa Clara fails, as the Mandí Stream was one of several streams from which water would have been collected, indicating that it was not the only option.[[190]](#footnote-190) Additionally, the fact that other methods of collection would have been costly or difficult did not make them impossible, nor did it make the threat grave and imminent as in the *Gabcikovo-Nagymaros* case and thus, necessity did not arise. Article 25 also goes on to say that necessity may not be invoked if the State has contributed to the situation of necessity.[[191]](#footnote-191) The situation was created by work being done on the Wirikuya Project,[[192]](#footnote-192) therefore placing the State of Santa Clara as the responsible party.

***3.4.4 Article 25-Violation of the Right to Judicial Protection in respect of the Pichicha people***

This right emphasises the fact that individuals have a right to prompt recourse for any issues, before a competent Court or tribunal.[[193]](#footnote-193)Additionally it is typically infringed when there is a lack of due diligence by the State in some way.[[194]](#footnote-194) In the case of the *Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, the Court found that as the State had not provided an effective remedy to stop the expropriation of the collective property of the indigenous people, that they had violated Article 25 of the Convention.[[195]](#footnote-195) In the case of *Bámaca Velasquez v. Guatemala* this Court held that it is not sufficient that such recourses exist, but that they must give results or responses to the violations of rights established in the Convention.[[196]](#footnote-196) This right is therefore concerned with the substantive nature and effects of laws set to protect fundamental rights. The amparo claim was first brought on 30 July 2011 and the injunction was granted on 10 August 2011.[[197]](#footnote-197) It has been noted by the Court that justice that is not timely is not justice.[[198]](#footnote-198) This is directly related to the need for there to be proper recourse to justice. The amparo action ought not to have only been an available remedy, but ought to have yielded a result that would remedy the rights lost. However due to the amparo being rendered ineffective through procedural defects, there has been a violation of Article 25 by Santa Clara.

***3.4.5 Article 26-Violation of the Right to Progressive Development in respect of the Pichicha people***

This article sets out the obligations of State Parties concerning economic, social and cultural rights. It indicates that measures ought to be adopted both internally and through international cooperation in order to progressively achieve the realization of the rights set out in the Charter of the OAS.[[199]](#footnote-199) Additionally, Article 2(2)(b) of *ILO 169* places on the State, the responsibility to promote the full realisation of social, economic and cultural rights of the indigenous peoples, with respect for their social and cultural identity, their customs and traditions, and their institutions.[[200]](#footnote-200) This means that the State of Santa Clara ought to have implemented measures that would aid in the indigenous people progressively realizing their rights. It also shows that Santa Clara ought to see the development of indigenous rights, subject to indigenous cultures and practices. The State would therefore have to, among other things, respect the religious beliefs of the Pichicha people, which clearly was not done considering the irreparable harm caused to the religious sites near the Mandí Stream.[[201]](#footnote-201) There is no evidence of domestic laws having been put in place regarding indigenous groups and their protection. This also is inimical to the progressive development of human rights. Santa Clara therefore failed in its duty enshrined in this Article.

## 3.5 Santa Clara has violated Articles 8 and 25 of the American Convention, all read in conjunction with Articles 1(1) and 2 in respect of the Orífuna people.

***3.5.1 Article 8 and 25- Violation the Rights to Fair Trial and Judicial Protection in respect of the Orífuna people***

State Parties to the *ACHR*, upon ratification have the obligation under Article 8 to recognise and protect the right to fair trial. This right contemplates that in order for a trial to be ‘fair’ the State must not only investigate, prosecute and punish, but it must also take into consideration all relevant apparatus in its legal system before it makes a decision. This consideration must also be done in good faith. In this present case the Orífuna people’s claim for the violation of their right to prior consultation was held to be unfounded because the State of Santa Clara claimed such a right did not exist in Santa Clara when it pertained to foreign policy. These assertions by Santa Clara, however, go against the general principle of international law *pacta sunt servanda*, adopted through Article 29 of the *Convention*.[[202]](#footnote-202) Santa Clara in 1980 ratified the American Convention and thus by virtue of Article 1(1)[[203]](#footnote-203) is bound to give effect to the rights in the convention. It is through Article 29[[204]](#footnote-204) that State Parties are also bound to promote the effective application (*effet utile*) of the instrument as the Court strives for a *pro homine* interpretation of the Convention, rejecting interpretations which aim at looking for the ‘original intent’ of an instrument. Therefore despite the development of the right as seen in *Saramaka People v. Suriname[[205]](#footnote-205)* not being contemplated in such a wide of a scope in the 1980’s when Santa Clara acceded to the *Convention*, the State is expected to perform its obligations in good faith. There was no consultation with the indigenous people, but rather only dissemination of information and meetings to discuss compensation and benefits.[[206]](#footnote-206) Likewise Article 25 requires a State not only to provide a judicial remedy but rather to ensure the remedy is “truly effective to establish whether or not there has been a human rights violation and to provide reparation.[[207]](#footnote-207) In the case of the Orífuna people, Santa Clara did not have any remedy to account for the lack of prior consultation.[[208]](#footnote-208) Additionally, Article 4 of *ILO 169*, states that special measures shall be adopted for the safeguarding of indigenous peoples, their culture, environment, property, institutions and labour.[[209]](#footnote-209) No such measures were adopted by Santa Clara and as a result the Orífuna people suffered. The absence of such a remedy directly violates the right to judicial protection and Santa Clara would be in violation of both Articles 8 and 25.

# REQUEST FOR RELIEF

Based on the foregoing submissions, the Representatives of the Victims respectfully request that this Court:

1.  Declare that Santa Clara has violated the rights enshrined in Articles 4, 5, 16, 17, 8 and 25 of the *American Convention*, all read in conjunction with Articles 1(1) and 2 in respect of Edmundo Camana, Teresa Osorio, and their children;

2.  Declare that Santa Clara has violated Article 5.1 of the *American Convention*, read in conjunction with Articles 1(1) and 2 in respect to the immediate relatives of Edmundo Camana, Teresa Osorio, and their children;

3.  Declare that Santa Clara has violated the rights enshrined in Articles 5, 8, 21, 25 and 26 of the *American Convention,* all read in conjunction with Articles 1(1) and 2 in respect of the Pichicha people;

4.  Declare that Santa Clara has violated the rights enshrined in Articles 8 and 25 of the *American Convention,* all read in conjunction with Articles 1(1) and 2 in respect of the Orífuna people;

5. Request that the Wirikuya Project be terminated, given that neither the license nor Social and Environmental Impact Study had been subject to effective participation, and prior consultation in good faith with the community people;

6.  Order compensation to remedy the inadequacy of the reparations and to cover any expenses associated with bringing this case before the Inter-American Commission and this Court.

1. Hypothetical Case, para 9. [↑](#footnote-ref-1)
2. Hypothetical Case, para 2. [↑](#footnote-ref-2)
3. Hypothetical Case, para 9. [↑](#footnote-ref-3)
4. Hypothetical Case, paras 1 & 2. [↑](#footnote-ref-4)
5. Hypothetical Case, para 4. [↑](#footnote-ref-5)
6. Hypothetical Case, para 7. [↑](#footnote-ref-6)
7. Hypothetical Case, para 8. [↑](#footnote-ref-7)
8. Hypothetical Case, para 8. [↑](#footnote-ref-8)
9. Hypothetical Case, para 10. [↑](#footnote-ref-9)
10. Hypothetical Case, para 10. [↑](#footnote-ref-10)
11. Hypothetical Case, para 11. [↑](#footnote-ref-11)
12. Hypothetical Case, para 11. [↑](#footnote-ref-12)
13. Hypothetical Case, para 12. [↑](#footnote-ref-13)
14. Hypothetical Case, para 12. [↑](#footnote-ref-14)
15. Hypothetical Case, para 13. [↑](#footnote-ref-15)
16. Hypothetical Case, para 14. [↑](#footnote-ref-16)
17. Hypothetical Case, paras 15 & 16. [↑](#footnote-ref-17)
18. Hypothetical Case, para 17. [↑](#footnote-ref-18)
19. Hypothetical Case, para 17. [↑](#footnote-ref-19)
20. Hypothetical Case, para 18. [↑](#footnote-ref-20)
21. Hypothetical Case, para 19. [↑](#footnote-ref-21)
22. Hypothetical Case, paras 19 & 20. [↑](#footnote-ref-22)
23. Hypothetical Case, para 21. [↑](#footnote-ref-23)
24. Hypothetical Case, para 21. [↑](#footnote-ref-24)
25. Hypothetical Case, para 22. [↑](#footnote-ref-25)
26. Hypothetical Case, paras 17 & 23. [↑](#footnote-ref-26)
27. Hypothetical Case, para 24. [↑](#footnote-ref-27)
28. Hypothetical Case, para 25. [↑](#footnote-ref-28)
29. Hypothetical Case, para 26. [↑](#footnote-ref-29)
30. Hypothetical Case, para 27. [↑](#footnote-ref-30)
31. Hypothetical Case, para 28. [↑](#footnote-ref-31)
32. Hypothetical Case, para 29. [↑](#footnote-ref-32)
33. Hypothetical Case, para 31. [↑](#footnote-ref-33)
34. Hypothetical Case, para 32. [↑](#footnote-ref-34)
35. Hypothetical Case, para 33. [↑](#footnote-ref-35)
36. Hypothetical Case, para 34. [↑](#footnote-ref-36)
37. Hypothetical Case, para 35. [↑](#footnote-ref-37)
38. Hypothetical Case, para 36. [↑](#footnote-ref-38)
39. Hypothetical Case, para 38. [↑](#footnote-ref-39)
40. Hypothetical Case, para 39. [↑](#footnote-ref-40)
41. Hypothetical Case, paras 40 & 41. [↑](#footnote-ref-41)
42. Hypothetical Case, para 42. [↑](#footnote-ref-42)
43. Hypothetical Case, para 42. [↑](#footnote-ref-43)
44. Hypothetical Case, para 43. [↑](#footnote-ref-44)
45. Hypothetical Case, para 44. [↑](#footnote-ref-45)
46. Hypothetical Case, paras 45 & 46. [↑](#footnote-ref-46)
47. Hypothetical Case, para 46. [↑](#footnote-ref-47)
48. Hypothetical Case, para 47. [↑](#footnote-ref-48)
49. Hypothetical Case, para 48. [↑](#footnote-ref-49)
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51. Hypothetical Case, para 50. [↑](#footnote-ref-51)
52. Hypothetical Case, para 51. [↑](#footnote-ref-52)
53. Hypothetical Case, para 51. [↑](#footnote-ref-53)
54. Hypothetical Case, para 49. [↑](#footnote-ref-54)
55. Hypothetical Case, para 52. [↑](#footnote-ref-55)
56. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969. [↑](#footnote-ref-56)
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59. Ibid. [↑](#footnote-ref-59)
60. Ibid. [↑](#footnote-ref-60)
61. Hypothetical Case, para 49. [↑](#footnote-ref-61)
62. *Victor Saldaño v. Argentina*, Petition, Report No. 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), para 17. [↑](#footnote-ref-62)
63. *US Interdiction of Haitians on the High Seas*(United States) March 13, 1997, Report No. 51/96, Case No. 10.675, para 167. [↑](#footnote-ref-63)
64. *Victor Saldaño v. Argentina*, Petition, Report No. 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), para 17. [↑](#footnote-ref-64)
65. Ibid. [↑](#footnote-ref-65)
66. *US Interdiction of Haitians on the High Seas* (United States) March 13, 1997, Report No. 51/96, Case No. 10.675 para 167. [↑](#footnote-ref-66)
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68. Organization of American States (OAS), *Statute of American Commission on Human Rights*. Article 19 (c). [↑](#footnote-ref-68)
69. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, art 46(1(a). [↑](#footnote-ref-69)
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71. Katrine Bjørndal Skjelten, "The Principle of Exhaustion of Domestic Remedies in the Inter-American System of Human Rights; a reasonable obstacle or an impossible barrier?” Master's Thesis, University of Oslo, 2014, p. 36. [↑](#footnote-ref-71)
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73. Ibid, para 64. [↑](#footnote-ref-73)
74. Ibid, para 66. [↑](#footnote-ref-74)
75. Hypothetical Case, para 18 &20. [↑](#footnote-ref-75)
76. Hypothetical Case, para 18. [↑](#footnote-ref-76)
77. Hypothetical Case, para 24 and 26. [↑](#footnote-ref-77)
78. *Case of Baldeón García v. Perú*, Yllaconza Ramirez de Baldeón and ors (on behalf of Baldeón García) v. Peru, Merits, reparations and costs, IACHR Series C No 147, IHRL 1531 (IACHR 2006), 6th April 2006, Inter-American Court of Human Rights [IACtHR]. [↑](#footnote-ref-78)
79. Ibid, para 153. [↑](#footnote-ref-79)
80. Hypothetical Case, para 17 & 29. [↑](#footnote-ref-80)
81. Hypothetical Case, para 23 & 28. [↑](#footnote-ref-81)
82. Case 11.218, Report Nº 52/97, Inter-Am. C.H.R February 18, 1998. [↑](#footnote-ref-82)
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84. Hypothetical Question, para 39. [↑](#footnote-ref-84)
85. Hypothetical Case, Para 39. [↑](#footnote-ref-85)
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87. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969. [↑](#footnote-ref-87)
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89. Hypothetical Case, para 39. [↑](#footnote-ref-89)
90. Hypothetical Case, para 47. [↑](#footnote-ref-90)
91. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969. [↑](#footnote-ref-91)
92. Ibid. [↑](#footnote-ref-92)
93. *Case of the Pueblo Bello Massacre v. Colombia* Serie C No. 140. Inter-American Court of Human Rights (IACrtHR), 31 January 2006, para 120. [↑](#footnote-ref-93)
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99. Petition, Report No. 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 289 (1998), para 17. [↑](#footnote-ref-99)
100. (United States) March 13, 1997, Report No. 51/96, Case No. 10.675, para 167. [↑](#footnote-ref-100)
101. Hypothetical Case, para 8. [↑](#footnote-ref-101)
102. Ibid. [↑](#footnote-ref-102)
103. Hypothetical Case, paras 14, 19 & 22. [↑](#footnote-ref-103)
104. Hypothetical Case, para 22. [↑](#footnote-ref-104)
105. Clarification Question & Answer 16. [↑](#footnote-ref-105)
106. *SERAC v. Nigeria*, Case No. ACHPR/COMM/A044/1, Afr. Comm’n Human & Peoples’ Rights ¶ 46 (May 27, 2002). [↑](#footnote-ref-106)
107. Clarification Question & Answer 1. [↑](#footnote-ref-107)
108. *Case of the Pueblo Bello Massacre v. Colombia* Serie C No. 140. Inter-American Court of Human Rights (IACrtHR), 31 January 2006. [↑](#footnote-ref-108)
109. Hypothetical Case, para 13. [↑](#footnote-ref-109)
110. *US Interdiction of Haitians on the High Seas* (United States) March 13, 1997, Report No. 51/96, Case No. 10.675 para 167. [↑](#footnote-ref-110)
111. Clarification Question and Answer 61. [↑](#footnote-ref-111)
112. Hypothetical Case, paras 13-14. [↑](#footnote-ref-112)
113. Hypothetical Case, para 14. [↑](#footnote-ref-113)
114. Hypothetical Case, para 23. [↑](#footnote-ref-114)
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120. Hypothetical Case, para 17. [↑](#footnote-ref-120)
121. Hypothetical Case, para 23. [↑](#footnote-ref-121)
122. Hypothetical Case, para 23. [↑](#footnote-ref-122)
123. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969. [↑](#footnote-ref-123)
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133. *Chitay Nech et al v. Guatemala*, Series C. 212, Inter-American Court of Human Rights, 25 May, 2010. [↑](#footnote-ref-133)
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206. Hypothetical Case, paras 42-45. [↑](#footnote-ref-206)
207. *Case of the Afro-descendant Communities Displaed from the Cacarica River Basin (Operation Genesis) v. Colombia*, para 155. [↑](#footnote-ref-207)
208. Hypothetical Case, para 47. [↑](#footnote-ref-208)
209. ILO, *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, 27 June 1989, 28 ILM, 1386 [ILO Convention No. 169]. [↑](#footnote-ref-209)