

**Order of the
Inter-American Court of Human Rights
of July 10, 2007
Case of Cantoral-Huamaní and García-Santa Cruz v. Peru
(Preliminary Objection, Merits, Reparations and Costs)**

In the case of *Cantoral-Huamaní and García-Santa Cruz*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:¹

Sergio García Ramírez, President
Cecilia Medina Quiroga, Vice President
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge, and
Rhadys Abreu Blondet, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary;

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 29, 31, 53(2), 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this Judgment.

**I
INTRODUCTION OF THE CASE AND MATTER IN DISPUTE**

1. On February 21, 2006, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") lodged before the Court an application against the State of Peru (hereinafter "the State" or "Peru"). This application originated from petition No. 10,435, submitted to the Secretariat of the Commission on May 9, 1989, by Ester Hinostrosa, on behalf of the Filomena Tomaira Pacsi organization. On October 15, 2005, pursuant to Article 50 of the Convention, the Commission approved Report on admissibility and merits No. 76/05, which made specific recommendations to the State.² On

¹ Judge Diego García-Sayán excused himself from hearing this case "in the terms of Article 19 of the Statute and Article 19 of the Rules of Procedure." The President of the Court, in consultation with the judges of Court, decided to accept this excuse, based on the provisions of these articles and the examination of the reasons given by Judge García-Sayán.

² In the Report on merits, the Commission concluded that the State was responsible for violating the rights to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), judicial

February 13, 2006, the Commission decided to submit the case to the jurisdiction of the Court “because it considered that the State had not adopted the recommendations made in the said report satisfactorily.”³

2. The application refers to the alleged “kidnapping, [...] torture and [...] extrajudicial execution of Saúl Isaac Cantoral-Huamaní and Consuelo Trinidad García-Santa Cruz [...] on February 13, 1989, in Lima, Peru, and to the total impunity of these facts.” The Commission indicated “the importance of submitting this case to the Court, because more than 17 years have elapsed and the next of kin of the [alleged] victims have been unable to discover the truth about the violations of the rights of the [alleged] victims, and those responsible have not been punished.” In addition, the Commission considered that this is “an opportunity for the Court to rule on the activities of the ‘Rodrigo Franco Commando,’ which was composed of State agents and which was responsible for grave human rights violations during the period 1985-1990.” The Commission also stated that “since the [alleged] victims were prominent trade union leaders and miners, this case deals with the problem of the State’s repressive activities against trade union leaders to discourage social protest in Peru and, in general, with the effects on freedom of association.”

3. The Commission asked the Court to conclude and declare that the State was responsible for “the violation of the rights to personal liberty, to humane treatment, to life, to judicial guarantees, to judicial protection, and to freedom of association embodied in Articles 7, 5, 4, 8, 25 and 16 of the American Convention on Human Rights in relation to Article 1(1) thereof, as of February 13, 1989, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as of March 28, 1991, to the detriment of Saúl Isaac Cantoral Huamaní, Consuelo Trinidad García Santa Cruz, and their next of kin.” In consequence, the Commission asked the Court to order the State to take specific measures of reparation.

4. On May 17, 2006, in keeping with Article 23 of the Rules of Procedure, the representatives of the alleged victims and their next of kin, the *Asociación Pro Derechos Humanos* (APRODEH) (hereinafter “the representatives”), presented their brief with requests, arguments and evidence (hereinafter “requests and arguments brief”). Based on the facts mentioned by the Commission in its application, the representatives asked the Court to declare that the State “was responsible for the violation of Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 4 (Right to Life), 8 (Right to a Fair Trial), 25 (Judicial Protection) and 16 (Freedom of Association) of the American Convention on Human Rights to the detriment of Saúl Isaac Cantoral-Huamaní and Consuelo Trinidad García-Santa Cruz.” They also asked the Court to declare that the State “had violated [Articles] 5 and 25 of the American Convention on Human Rights in relation to Article 1(1) thereof to the detriment of the next of kin of Saúl Isaac Cantoral-Huamaní and Consuelo Trinidad García-Santa Cruz.” In addition, they requested specific measures of reparation and reimbursement of the costs and expenses incurred in processing the case at the national level and in the international proceedings.

5. On July 21, 2006, the State submitted its brief answering the application and with observations on the requests and arguments brief (hereinafter “answer to the application”), in which it formulated a “preliminary objection concerning the Court’s lack of competence to

protection (Article 25) and freedom of association (Article 16) of the American Convention, in relation to Article 1(1) thereof.

³ The Inter-American Commission on Human Rights appointed as its delegates: President, Clare Kamau Roberts, Executive Secretary, Santiago A. Canton, and as its legal advisers, Ariel E. Dulitzky, María Claudia Pulido, Víctor Madrigal Borloz and Manuela Cuví Rodríguez. As of April 18, 2006, the Commission’s delegates were Paolo Carozza, Commissioner, and Santiago A. Canton, Executive Secretary.

apply the Inter-American Convention to Prevent and Punish Torture,” and made a partial acknowledgement of responsibility concerning the violation of Articles 8 and 25 of the American Convention, the scope and content of which will be determined in chapter V of this judgment. In addition, the State indicated that “it did not acknowledge international responsibility for violating the rights established in Articles [4, 5, 7 and 16], because it considered that the facts included in the application of the Inter-American Commission on Human Rights had not been duly proved, since the Attorney General’s Office (*Ministerio Público*) was currently conducting an investigative procedure.”

II COMPETENCE

6. The Court is competent to hear this case, in the terms of Articles 62 and 63(1) of the Convention, because Peru has been a State Party to the American Convention since July 28, 1978, and accepted the compulsory jurisdiction of the Court on January 21, 1981.

7. Peru has been a State Party to the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention against Torture”) since March 28, 1991. According to the provisions of its Article 22, this treaty entered into force for the State on April 28, 1991.

III PROCEEDINGS BEFORE THE COURT

8. The Commission’s application was notified to the representatives and to the State on March 20 and 22, 2006, respectively. During the proceedings before the Court, in addition to the presentation of the principal briefs forwarded by the parties (*supra* paras. 1, 4 and 5), on August 29 and September 1, 2006, the Commission and the representatives, respectively, presented their arguments on the preliminary objection formulated by the State. The President of the Court (hereinafter “the President”) ordered that the testimony of two next of kin of the alleged victims proposed by the Commission, and of one former Deputy proposed by the representatives, as well as an expert report proposed by the representatives should be received by means of statements made before notary public (affidavits);⁴ the parties were given the opportunity to submit their observations on these statements. Also, considering the special circumstances of the case, the President convened the Inter-American Commission, the representatives, and the State to a public hearing to hear the testimony of three of the next of kin of the alleged victims and of a former Deputy proposed by the Commission, and also the final arguments of the parties on the preliminary objection, and possible merits, reparations and costs. This public hearing was held on January 23 and 24, 2007, during the seventy-fourth regular session of the Court.⁵ At this hearing the Court requested the parties to present helpful evidence and to clarify some points. Also, on the instructions of the President and based on Article 45(2) of the Rules of Procedure, the parties were subsequently required to present specific information and documentation to be considered as helpful evidence. In February 2007, the Commission, the representatives and the State submitted their briefs with final arguments on the preliminary

⁴ Order issued by the President of the Inter-American Court on December 11, 2006.

⁵ At the hearing, there appeared: (a) for the Inter-American Commission: Paolo Carozza, Commissioner; Ariel Dulitzky, Norma Colledani, Lilly Ching and Manuela Cuví, advisers; (b) for the representatives: Gloria Margarita Cano Legua, lawyer of the *Asociación Pro Derechos Humanos* (APRODEH) and Carolina Maida Loayza Tamayo, lawyer; and (c) for the State: Angel Marín Lozada, Agent, Luis Alberto Salgado Tantte, deputy Agent, Alberto Gutiérrez La Madrid, Ambassador of Peru to Costa Rica, and Miguel Guzmán, Councilor of the Peruvian Diplomatic Mission in Costa Rica.

objection, and possible merits, reparations and costs. Finally, two *amici curiae* briefs were submitted to the Court. The first was submitted by professor Jo-Marie Burt, on January 22, 2007, and the second by the "Flora Tristan" Peruvian Women's Center (*Centro de la Mujer Peruana 'Flora Tristán'*), the Aurora Vicar Association (*Asociación Aurora Vivar*), and the Research and Training Institute for Women and the Family (INCAFAM) (*Instituto de Investigación y Capacitación de la Familia y la Mujer*) on February 19, 2007.

IV PRELIMINARY OBJECTION

9. In the brief answering the application and with observations on the requests and arguments brief, the State filed the preliminary objection of "the lack of competence of the Court to apply the Inter-American Convention to Prevent and Punish Torture." The State questioned both the competence *ratione materiae* and the competence *ratione temporis* of the Court to apply the said Convention in the instant case.

10. Regarding the alleged lack of competence *ratione materiae*, the State indicated that "[c]onsidering the importance of the principle of consent in international law, the Court could not apply the Convention [against Torture], since neither Article 25 nor Article 27(1) of the American Convention can be interpreted as provisions that authorize the Court to apply [the said Convention against Torture]."

11. Among its arguments, the Commission cited the Court's case law and affirmed that the Court "had applied the Convention against Torture on several occasions and had declared the responsibility of several States as a result of its violation." Likewise, the representatives stated that the "instances [of the inter-American system for the protection of human rights] have competence to hear cases on the application of the Convention against Torture [...], in strict observance of Article 8 of that treaty."

12. The Court reiterates its case law to the effect that it is competent "to interpret and apply the Convention against Torture and to declare the responsibility of a State that has consented to be bound by this Convention and has accepted, also, the jurisdiction of the Inter-American Court of Human Rights."⁶ Since Peru is a Party to the Convention against Torture and has accepted the compulsory jurisdiction of the Court (*supra* Chapter II), the

⁶ The Court has applied the Convention against Torture in the following cases: *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 266; *Case of Vargas-Areco v. Paraguay*, Judgment of September 26, 2006. Series C No. 155, para. 94; *Case of Baldeón-García v. Peru*. Judgment of April 6, 2006. Series C No. 147, para. 162; *Case of Gutiérrez-Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 54; *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C no. 114, para. 159; *Case of Blanco-Romero et al v. Venezuela*. Judgment of November 28, 2005. Series C No. 138, para. 61; *Case of the Gómez-Paquiyaui Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, para. 117 and 156; *Case of Maritza Urrutia v. Guatemala*. Judgment of November 27, 2003. Series C. No. 103, para. 98; *Case of Bámaca-Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 223; *Case of Cantoral-Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 191; *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, paras. 248 to 252; and *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala*. Judgment of March 8, 1998. Series C. No. 37, para. 136. In this regard, the relevant part of Article 8 of the Convention against Torture, on competence to apply it, indicates that "[a]fter all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State." In its Judgment in *Case of Villagrán-Morales et al.* (paras. 247 and 248), the Court referred to the historical background to this article and indicated that "[a] general clause [on competence, that did not refer expressly and exclusively to the Inter-American Court,] paved the way to the Convention against Torture being acceded to or ratified by the greatest number of States. What was considered important was to attribute competence to apply the Convention against Torture to an international body, whether this was an existing commission, committee or court, or one created in the future."

Court is competent to rule on the alleged responsibility of the State for the violation of this instrument in this case.

13. Regarding the alleged lack of competence *ratione temporis*, the State argued that “the Convention [against Torture] entered into force for Peru as of April 28, 1991, in other words, after the crime perpetrated against the [alleged] victims,” so that “the said Convention is not applicable, and is not relevant as regards the issue of the failure to investigate acts of torture effectively.”

14. In this regard, the Inter-American Commission stated that it “was not alleging the violation of the Convention against Torture with regard to the facts [...] that occurred prior to March 28, 1991.” The Commission indicated that “in accordance with the obligations embodied in the American Convention, the State [...] had obligations prior to that date in relation to the prohibition, prevention, investigation and punishment of torture; [however,] after March 28, 1991, State obligations have been classified and defined by the Convention against Torture,” and it is as of that date that “the State failed to comply with the obligation contained in Articles 1, 6 and 8 of [the said] Convention against Torture [...] owing to its failure to comply with the obligation to investigate and punish all those responsible for the acts of torture of which Saúl Isaac Cantoral-Huamani and Consuelo Trinidad García-Santa Cruz were victims.”

15. The representatives stated that “April 28, 1991, [is the] date as of which failure to comply with Articles 1, 6 and 8 of the Convention [against Torture] should be considered.”

16. In the instant case, neither the Commission nor the representatives have alleged the violation of the Convention against Torture based on facts prior to its entry into force in Peru.

17. The State ratified the Inter-American Convention against Torture on March 28, 1991, and, pursuant to Article 22 thereof, it entered into force for the State on April 28, 1991.

18. The facts of this case that occurred prior to April 28, 1991, do not fall within the jurisdiction of the Court in the terms of this instrument. Nevertheless, the Court will retain its competence to hear the facts or acts that violated the Convention against Torture that occurred after that date.⁷

19. Based on the foregoing, the Court rejects the preliminary objection of lack of competence filed by the State.

V

PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

20. During the proceedings before the Court, the State made a partial acknowledgement of international responsibility in the instant case; the Court will therefore proceed to define its scope.

21. In exercise of its powers arising from the international judicial protection of human rights, the Court will examine the admissibility of the partial acknowledgement and decide its juridical effects.

⁷ Cf. *Case of Tibi v. Ecuador*, *supra* note 6, para. 62.

A) *The terms of the State's partial acknowledgement of international responsibility*

22. In relation to the facts concerning Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, the State indicated that "the murder of the [alleged] victims cannot be denied"; nevertheless, "there are basic contradictions" "regarding the place where the kidnapping of the [alleged] victims occurred" and "details of the place and time of [their] interception" "are unclear." The State also indicated that "it is not responsible for the facts reported concerning the murder of Saúl Isaac Cantoral-Huamaní and Consuelo García-Santa Cruz because, based on the facts investigated, this action cannot be attributed to State agents."

23. Regarding the investigations conducted in the case, the State confessed "that "[...] the limited progress in the investigation into these murders during 17 years cannot be denied; during this time, investigations by both the police and the Attorney General's office have been unsuccessful."

24. Regarding the alleged torture suffered by the alleged victims before their death, the State indicated that "the preliminary investigations do not prove the alleged physical and/or psychological torture of the [alleged] victims."

25. With respect to legal claims, the State indicated that, pursuant to the facts it has acknowledged (*supra* paras. 22 and 23) "it cannot be held internationally responsible for the alleged violation of Articles 4, 5, 7 and 16 of the American Convention," to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.

26. Regarding the alleged violation of Articles 8 and 25 of the Convention, the State indicated that "it is partially responsible for not respecting the judicial guarantees and judicial protection of [the] next of kin [of the alleged victims, as established in] Articles 8 and 25 of the [American Convention]. However, given the existence [..., as of 2001,] of an independent and impartial investigation procedure before the Attorney General's Office, the violation has ceased and has not been consummated, and rights have been restored that are being fully exercised by the victims and their next of kin."

27. Regarding the alleged violation of Article 5 of the Convention in relation to the next of kin of the alleged victims, the State indicated, in both the chapter entitled "Article 5 of the [Convention]" of its answer to the application and in the chapter with the same title of its final arguments that: "with regard to the next of kin of the [alleged] victims of human rights violations, the Court [...] has indicated that they may, in turn, be victims." Moreover, it added that, "[in] this case, given the sufferings of the [alleged] victims, we can state that these sufferings extend to the closest members of the family, particularly those who had close affective ties with the [alleged] victims. This is because the [alleged] victims died in unclear circumstances and also because the authors of this crime have not been discovered, investigated and punished."

28. Despite the foregoing, in the chapter of its final arguments entitled "non-acknowledgement of international responsibility for the alleged violation of Article[...] 5 [...] of the Convention," the State indicated that the alleged violation of this Article was not "is not applicable either to the next of kin of the [alleged] victims in this case, because the next of kin of the victims have not received cruel, inhuman and degrading treatment during the investigative procedure from either the police or the judicial authorities." Furthermore, the State declared that, "according to the available forensic information, it has not been proved that any type of torture occurred during the capture and death of Saúl Cantoral and Consuelo García-Santa Cruz."

29. Regarding the alleged violation of Articles 1, 6 and 8 of the Convention against Torture, the State indicated that “since there is insufficient evidence about the alleged torture to which the alleged victims may have been subjected and, also, since the unlawful activities described in the application cannot be attributed to State agents, [the said allegations] do not entail the international responsibility of the State.”

30. With respect to the determination of victims, the State requested that the Court “take into account the documentary evidence authenticating the relationship and pre-existence of the next of kin of the [alleged] victims indicated by the Commission on February 13, 1989” and, with regard to “the siblings of the [alleged] victim, Consuelo García-Santa Cruz, [...it] requests that the close affective ties with the [alleged] victim be proved.”

31. With respect to its requests relating to reparations and costs, the State indicated that it “accepts the publication of the judgment that is delivered in a national newspaper” and that the Commission’s request “that a complete, impartial, effective and prompt investigation be conducted [...] is not opposed by the State; to the contrary, it concurs with [the] effort [...] to investigate the facts and not to allow them to remain unpunished.”

B) Arguments of the Inter-American Commission and of the representatives concerning the State's partial acknowledgement of responsibility

32. The Commission indicated that the State “had not disputed the basic circumstances of time, manner and place in which the [alleged] victims were kidnapped and the way in which their bodies were found. The State does dispute that the said executions could be attributed to State agents. Also, the State does not dispute the flaws in the investigation and, at times, the total absence of an investigation that characterized this case from the date of the executions until the re-opening of the investigations in 2001. The Peruvian State has also accepted that this lack of investigation has caused profound suffering to the next of kin of [the alleged victims].”

33. The representatives stated that “[i]n its answer to the application, the State admits that, 18 years after the facts occurred, there is only a preliminary investigation (*investigación fiscal*) re-opened in 2001 on the initiative of the next of kin of the [alleged] victims.” The representatives indicated that they “recognized and appreciated the State’s acknowledgement that the close next of kin of [the alleged victims] are victims with the right to receive reparation.” With regard to the State’s arguments (*supra* paras. 27 and 28), they maintained that it is not necessary to prove “[...] the suffering that the death of a person causes to their children[,...] spouse or companion[,...] parents and siblings [...].”

C) Extent of the persisting dispute concerning the facts in the present case

34. The Court appreciates the State’s partial acknowledgement of responsibility and, having examined this acknowledgement, and taking into account the arguments of the Commission and the representatives, the Court considers that the dispute persists in the terms described below.

35. Regarding the facts, the dispute persists concerning the treatment received by the alleged victims before their murder, the circumstances and authorship of the murder, and also the State’s actions after 2001 in relation to the investigation into the events. There are also discrepancies with respect to the events which constitute a violation of Article 5 to the

detriment of certain next of kin of the executed individuals. Although the State first admitted the affliction suffered by these individuals, it later stated that they had not been subject to cruel, inhuman or degrading treatment (*supra* paras. 27 and 28).

36. Likewise, the Court observes that disagreement exists with regard to whether reparations should be granted, as well as the method of reparation and the possible beneficiaries.

37. In view of the foregoing and as mentioned above, the Court will determine the facts that it considers proved from the body of evidence and, based on this and the facts acknowledged by the State, the corresponding juridical consequences.

VI EVIDENCE

38. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, and also on the Court's case law regarding evidence and its assessment, the Court will proceed to examine and assess the documentary probative elements forwarded by the Commission, the representatives and the State at different procedural opportunities or as helpful evidence requested by the President and the Court, as well as the testimonial statements and opinion provided by sworn written statement, written statement, or in the public hearing before the Court. To this end, the Court will abide by the principles of sound criticism, within the corresponding legal framework.⁸

A) DOCUMENTARY, TESTIMONIAL AND EXPERT EVIDENCE

39. Regarding the documentary evidence, the three testimonial statements, one expert opinion given in a sworn written statement, and one written statement of the following persons were presented:

(a) Vanessa Cantoral-Contreras, witness proposed by the Inter-American Commission; daughter of Saúl Cantoral-Huamaní. She testified about the alleged kidnapping and threats endured by her father prior to his death and provided information on how she learned of the death of her father and of the suffering when she found out from the media that his body had been thrown onto the sand with a gunshot wound in his forehead. She also testified about the repercussions of the death of her father, who some newspapers had referred to as a terrorist; and about the family's search for justice, and her mother's fear that something could happen to her family.

(b) Amelia Beatriz Santa Cruz-Portacarrero, widow of García, witness proposed by the Inter-American Commission; mother of Consuelo García-Santa Cruz. She testified how she and her family were affected by the death of her daughter; particularly, how their psychological and physical health was affected. She also referred to the failure to determine what happened to her daughter.

(c) Gustavo Espinoza-Montesinos, witness proposed by the representatives; he is a former representative of the Congress of the Republic. He testified that he took

⁸ Cf. *Case of Bueno-Alves v. Argentina*. Judgment of May 11, 2007. Series C No. 164, para. 36; *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C No. 163, para. 55, and *Case of La Cantuta v. Peru*. Judgment of November 29, 2006. Series C No. 162, para. 59.

part in a parliamentary commission that investigated the activities of the “Rodrigo Franco Commando.” He testified about the alleged relationship that existed between the State, the Rodrigo Franco paramilitary commando and the extrajudicial execution of the alleged victims. In addition, he referred to the alleged attacks perpetrated by the “Rodrigo Franco Commando” against political activists of the opposition parties and representatives of trade unions and social organizations.

(d) Roberto Alfonso Gushiken-Miyagui, the expert witness proposed by the representatives, presented his report on the alleged psychological harm suffered by the next of kin of the alleged victims as a consequence of the facts of the case, and referred to their need to receive psychological care.

40. Regarding the evidence given in the public hearing, the Court heard the testimonial statements of:⁹

(a) Ulises Cantoral-Huamaní, witness proposed by the Inter-American Commission. He is the brother of the alleged victim, Saúl Cantoral-Huamaní. He testified about the functions of his brother in the *Federación Nacional de Trabajadores Mineros, Metalúrgicos y Siderúrgicos del Perú* [National Federation of Mining, Iron and Steel Workers of Peru (FNTMMSP)]. He also testified about the alleged threats, kidnappings and extrajudicial execution of his brother and the measures taken by the family to obtain justice. In addition, he referred to the impact of his brother’s death on his family, on the mineworkers and on the said Federation.

(b) Pelagia Melida Contreras Montoya de Cantoral, witness proposed by the Inter-American Commission. She is the widow of the alleged victim, Saúl Cantoral-Huamaní. She testified about the alleged threats, kidnappings and extrajudicial execution of her husband. She also referred to the situation of the family after his death; particularly the responsibilities she had to assume to raise their three children. In addition, she testified on the steps taken by her family to obtain justice, the mislaying of the autopsy of Saúl Cantoral-Huamaní, and the harm to the family owing to the exhumation and the results of the second autopsy, which supposedly indicated that her husband had been beaten before his execution.

(c) Rosa Amelia García-Santa Cruz, widow of Valverde, witness proposed by the Inter-American Commission. She is a sister of the alleged victim, Consuelo García-Santa Cruz. She testified about the alleged kidnapping and extrajudicial execution of her sister, and the subsequent family situation; particularly about how her mother and father were affected. She also referred to the measures taken by her family to obtain justice and the impact on her family of discovering, years later, owing to a second autopsy, that the cause of her sister’s death was different from the State’s official version.

B) ASSESSMENT OF THE EVIDENCE

41. In this case, as in others, in application of Article 45(1) and 45(2) of statements submitted by the parties at the proper procedural opportunity or as helpful evidence, which

⁹ In a communication of January 5, 2007, the Inter-American Commission desisted from presenting the testimony of Manuel Eduardo José Piqueras-Luna, who had been summoned by the President in an Order of December 11, 1006 (file of preliminary objection, merits, reparations and costs).

were not contested or opposed, and whose authenticity was not questioned.¹⁰ The Court also admits the helpful evidence provided by the representatives on June 8 and 15, 2007, taking into account the observations made by the State, and assesses it together with the body of evidence in the case. Regarding the press cuttings submitted by the parties, the Court has considered that they can be assessed when they refer to well-known, public facts or statements by State officials, or when they corroborate aspects related to the case that have already been proved by other means.¹¹

42. Furthermore, pursuant to Article 45(1) of the Rules of Procedure, the Court adds to the body of evidence the documents presented by the State during the public hearing held on January 23 and 24, 2007, and those forwarded by the State on January 23, 2007, because it considers them useful to decide this case and because they were not contested and their authenticity was not questioned by either the Commission or the representatives.

43. Regarding the testimonies and expert opinion given in this case, the Court finds them pertinent to the extent they comply with the purpose defined by the President in the Order requiring them (*supra* para. 8), and takes into account the observations of the State. The Court accepts that the Commission desisted from offering Mr. Piqueras Luna, who had been summoned as a witness (*supra* para. 9).

44. Regarding the testimonial statements made by the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, the Court considers that these statements cannot be assessed in isolation since these persons have a direct interest in the case; hence their statements will be assessed together with all the evidence in the case.¹²

45. Regarding the admission of the evidence, the State indicated that the "lack of procedural certainty in the Order [of the President of the Court of December 11, 2006,] that varied the procedural situation of the proposed expert witnesses[, Manuel Piqueras-Luna and Gustavo Espinoza-Montesinos, and decided to receive their statements as witnesses], contributed to rendering the State defenseless." In this regard, the Court has accepted that the Commission desisted from proposing Mr. Piqueras-Luna (*supra* para. 43); hence, it will only rule on the statement that was effectively made, that of Gustavo Espinoza-Montesinos. Second, the Court recalls that the President has the power to decide the capacity in which he considers it pertinent to receive the evidence offered and that the Court has broad powers to receive the evidence it considers necessary.¹³ Furthermore, the Court deems that the State's right to defense and to adversarial proceedings was guaranteed since Peru was able to submit the observations it considered pertinent when the evidence was provided, as well as on the statement made by Mr. Espinoza-Montesinos. Based on the above, the Court incorporates this statement into the body of evidence in this case and assesses it, taking into account the State's observations on its content, and according to the rules of sound criticism.

¹⁰ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 38; *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 59; and *Case of La Cantuta v. Peru*, *supra* note 8, para. 62

¹¹ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 46; *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 59; and *Case of La Cantuta v. Peru*, *supra* note 8, para. 65.

¹² Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 60; *Case of La Cantuta v. Peru*, *supra* note 8, para. 64, and *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 196.

¹³ Cf. *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 184; *Case of Almonacid-Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154, para. 69; *Case of Servellón-García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 35; and *Case of Ximenes-Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, paras. 44 and 48.

46. Regarding the expert opinion of the psychologist, Robert Alfonso Gushiken-Miyagui, the Court takes note of the State's observations and assesses the opinion to the extent that it complies with its purpose and according to the rules of sound criticism.

47. On March 26, 2007, the State submitted a brief with "observations on the [final] arguments presented by the Commission [...] and the next of kin of the alleged victims." The Court did not accept the brief submitted by the State, because it constituted a written procedural act that is not foreseen in the Rules of Procedure of the Court and that had not been requested by either the Court or its President.

48. In application of the provisions of Article 45(1) of the Rules of Procedure, the Court incorporates the following documents into the body of evidence in this case, as helpful evidence: Final Report of the Truth and Reconciliation Commission (CVR), concluded on August 27, 2003, in Lima, Peru; Report of the Committee on Freedom of Association of the International Labour Organization, number 278 with regard to Peru (Vol. LXXIV, 1991, Series B, No. 2), available at: <http://www.oit.org.pe/sindi/casos/per/per22.html>, consulted on May 20, 2007; Report of the Committee on Freedom of Association of the International Labour Organization, number 265 with regard to Peru (Vol. LXXII, 1989, Series B, No. 2), cases Nos. 1478 and 1484, available at: <http://www.oit.org.pe/sindi/casos/per/per21.html> consulted on May 20, 2007; Report of the Committee on Freedom of Association of the International Labour Organization, number 337 with regard to Colombia (Vol. LXXXVIII, 2005, Series B, No. 2), Case No. 1787, available at: <http://www.oit.org.pe/sindi/casos/col/col200503.html> consulted on May 20, 2007; and Supreme Decree No. 065-2001-PCM of June 4, 2001, available at: <http://www.cverdad.org.pe/lacomision/cnormas/normas01.php>, consulted on April 30, 2007.

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49. Having examined the probative elements in the file of the instant case, the statements of the parties, and the State's partial acknowledgement of international responsibility, the Court will proceed to examine the violations that have been alleged in this case, based on the facts that have already been acknowledged and those that will be proven and that are included in each respective chapter. The Court will also examine the pertinent arguments of the parties, taking into account the acquiescence to the facts and claims made by the State.

VII VIOLATION OF ARTICLES 4,¹⁴ 5,¹⁵ AND 7¹⁶ (RIGHT TO LIFE, HUMANE TREATMENT AND PERSONAL LIBERTY) IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION

¹⁴ The relevant part of this Article establishes that:

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.

¹⁵ The relevant part of this Article establishes that:

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.

¹⁶ The relevant part of this Article establishes that:

1. Every person has the right to personal liberty and security
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.

50. Taking into consideration the acknowledgement of the facts made by the State, the statements of the parties, and the evidence submitted, the Court will proceed to establish the facts that it understands have been proved by the body of evidence in this case, together with the corresponding juridical consequences. In this regard, the Court notes the State's observations regarding the context in which the facts of this case occurred, to the effect that Peru "recognizes the importance of the facts that are elucidated in these international proceedings and their impact on the recent history of the Republic, because they constitute one more painful chapter in the 20-year period of political violence that affected the country, leaving a tragic residue of deaths, and disappeared and displaced persons, at an immense financial cost."

i) Concerning the facts relating to the alleged violations considered in this section

The activities of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz in the mining sector.

51. Saúl Isaac Cantoral-Huamaní lived in Nazca with his wife and children at the time of the facts. As of 1987, he was the Secretary General of the National Federation of Mining, Iron and Steel Workers of Peru (FNTMMSP). In this context, he led the first mining strike, from July 17 to August 17, 1988, for recognition of the national miners' list of demands (*Pliego Nacional Minero*), and a second national strike from October 17 to December 17, 1988.

52. Consuelo Trinidad García-Santa Cruz lived with her parents and her family in Comas. She was a literacy teacher and specialized in textiles. In 1984, with other women, she founded the "Filomena Tomaira-Pacsi Services for Mining Women" Women's Center, an association devoted to providing training and advisory services to the miners' wives committees in the country's mining camps, and to taking care of the needs of the mining families. It was while she was involved in these activities that she met Saúl Cantoral-Huamaní.

The situation of the mining sector at the end of the 1980s

53. According to the Final Report of the Truth and Reconciliation Commission (hereinafter "the CVR"), from 1980 to 2000, Peru experienced a situation of internal armed conflict. In particular, in 1988 and 1989, a series of murders and extrajudicial executions were committed by State agents, Self-Defense Committees (CADs), paramilitary groups, and organizations such as the Tupac Amaru Revolutionary Movement (MRTA) and the Peruvian Communist Party-*Sendero Luminoso* (PCP-SL).¹⁷

54. In its section on "the participants in the conflict," the Final Report of the CVR contains a chapter on "social organizations," which includes a section entitled "trade unions, business associations, and women's organizations." This section examines the labor conflict in the mining sector, in the context of political violence. The CVR states that the National Federation of Mining, Iron and Steel Workers of Peru (FNTMMSP) was created in 1984; it united around 200 unions that assembled more than 65,000 mineworkers. Within this

¹⁷ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume IX, Appendix 3: Statistical compendium, Table 1, p. 280. The CVR recorded a total of 676 cases of murders and extrajudicial executions in 1988, of which it attributed 490 to the PCP-*Sendero Luminoso*, 143 to State agents, CADs and paramilitary groups, 7 to MRTA, and 36 to unidentified groups. In 1989, it recorded 1,206 cases of murders and extrajudicial executions, of which it attributed 847 to PCP-*Sendero Luminoso*, 236 to State agents, and paramilitary groups, 29 to MRTA, and 94 to unidentified groups and others.

Federation, and especially since 1985, union leaders with different perspectives sought “to consolidate their positions within the mining union.” The CVR places the “first murders” of mining leaders by the PCP-SL in the context of this jockeying for position among the trade union leaders. In this chapter, the CVR includes a section on 19 “deaths or disappearances of leaders and workers” between 1980 and 1989, which it compiled on the basis of complaints submitted to the International Labour Organization (ILO). Some of these deaths can be attributed to the PCP-SL, others to State agents and others cannot be attributed to any specific author.¹⁸

55. The CVR Final Report examines the context of murders and extrajudicial executions against mining union leaders in the section entitled “mineworkers unions,” which is part of a chapter entitled “case studies of violence.” In this section, the CVR includes a “chronology of political violence in the mining centers of the central highlands of Peru,” where it states that, during 1988 and 1989, the murder of four mining trade union leaders was attributed to PCP-SL and one to a “paramilitary group.”¹⁹

56. The CVR Report also indicates that “in the mid-1980s, the MRTA tried to carry out political activities in some trade unions” and “from 1986 to 1989, the PCP-SL tried “to radicalize its struggles, seeking to increase its influence with the leadership of the trade unions, intensifying its actions against the installations, and attacking and murdering union leaders.” Also, since 1986, “[t]he workers began to receive pressure from both the “*Senderistas*” and the army,” which “increased their patrols in all the mining camps.”²⁰

57. In its Report No. 278, the ILO Committee on Freedom of Association examined a communication presented by the FNTMMSP, which shows that Consuelo García-Santa Cruz and Saúl Cantoral-Huamani were the seventh and eighth mining activists murdered between May 1, 1988, and February 13, 1989.²¹

58. Regarding the labor conflict in the mining sector, it is worth noting that the FNTMMSP held its First National Unified Congress in 1987. At the time, it discussed a national list of mining demands that, subsequently, on May 18, 1988, was submitted to the State and the mine owners.²² Given that the mine owners rejected this list, a first national mining strike was called between July 17 and August 17, 1988. This strike was suspended following the adoption of a decree recognizing the right of the Federation’s workers to collective negotiation by sector of activity, and a resolution that appointed a Commission to negotiate the national list of mining demands. The mine owners reacted by filing judicial recourses against the decree and the said resolution. A second mining strike was initiated on October 17, 1988 and lasted until December 17, 1988.²³ As a result of the “radicalization of the protest measures” and the reaction of the mine owners, “the Government declare[d] a state of emergency with regard to the activities in the sector, militarized the mining camps, and

¹⁸ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume III, Chapter 3(2). “Trade unions, business associations, and women’s organizations,” pp. 335, 343,360-362.

¹⁹ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume V, Chapter 2(6). “The mineworkers’ unions,” pp. 219 and 220.

²⁰ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume V, Chapter 2(6). “The mineworkers’ unions,” pp. 204 and 216.

²¹ Cf. Report No. 278 of the Committee on Freedom of Association of the International Labour Organization with regard to Peru, *supra* para. 48, para. 226

²² Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume III, Chapter 3(2). “Trade unions, business associations, and women’s organizations,” p. 344, note from the Shougang Hierro Perú S.A.A Mineworkers Union (file of preliminary objection, merits, and possible reparations and costs, appendix 4 of the final written arguments presented by the State, pages 937 and 938).

²³ Cf. note from the Shougang Hierro Perú S.A.A Mineworkers Union (file of preliminary objection, merits, reparations and costs, appendix 4 of the final written arguments presented by the State, page 938).

authorized the dismissal of the workers who obeyed [the call to strike]. The police broke into the Federation's offices."²⁴

59. In early 1989, Saúl Cantoral-Huamaní announced to the press that a third national strike was in the offing. On January 25, 1989, the Government published Act No. 25,009 (the Miners' Retirement Act), which was one of the points on the list of national mining demands. This Act recognized the right of the mining iron and steel workers to retire early and obtain a pension, owing to the high-risks associated with mining activities.²⁵

The threats and attacks against Saúl Cantoral-Huamaní

60. On August 9, 1988, on the occasion of the first mining strike (*supra* para. 58), Saúl Cantoral-Huamaní was kidnapped by armed men who detained him violently, injected him with a narcotic substance, and took him to a place where he was interrogated.²⁶ According to a statement made by Saúl Cantoral-Huamaní to a newspaper, this kidnapping was carried out by the "Rodrigo Franco" paramilitary commando.²⁷

61. In October 1988, during the second strike (*supra* para. 58), Saúl Cantoral-Huamaní reported to a meeting of the General Assembly of the Shougang Hierro Perú Mineworkers Union that he "ha[d] received threats."²⁸ The declarations by Saúl Cantoral-Huamaní and newspaper articles indicate that the author of these threats was the "Rodrigo Franco" paramilitary commando.²⁹

²⁴ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume III, Chapter 3(2). "Trade unions, business associations, and women's organizations," p. 345, Report 265 of the Committee for Freedom of Association of the International Labour Organization with regard to Peru, *supra* para. 48, para. 525(d)

²⁵ Cf. Note from the Shougang Hierro Perú S.A.A Mineworkers Union (file of preliminary objection, merits, reparations and costs, appendix 4 of the final written arguments presented by the State, page 939).

²⁶ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2(19) "The murders carried out by the paramilitary group calling itself the Rodrigo Franco Commando (1985-1990)" (file of appendixes to the application, Volume I, appendix 2, page 8); Letter from the Shougang Hierro Peru S.A.A. Mineworkers Union (file of preliminary objections, merits and possible reparations and costs, appendix 4 of the final written arguments presented by the State, page 939; testimony given by Ulises Cantoral-Huamaní during the public hearing held before the Inter-American Court on January 23 and 24, 2007; announcement signed by Moisés Palomino-Salcedo and Saúl Cantoral-Huamaní, President and Secretary of the National Federation of Mining, Iron and Steel Workers of Peru (FNTMMSP), entitled "!!Exigimos solución and no la represión!! Repudiamos secuestro de nuestro dirigente!!" [We demand solutions and not repression! We repudiate the kidnapping of our leader!] published in the "La Voz" newspaper on August 11, 1988 (file of appendixes to the application, appendix 1(19), page 313); newspaper article entitled: "Secuestran and amenazan de muerte a dirigente minero" published in "El Nuevo Diario" newspaper on August 13, 1988 (file of appendixes to the application, appendix 1(19), page 313); newspaper article entitled "Calle del secuestro" published in the magazine "Si" for the week of February 20 to 27, 1989 (file of merits and possible reparations and costs, page 920); newspaper article entitled "Testigo puede identificar a los asesinos" published in "Diario La República" on February 15, 1989 (file of appendixes to the application, appendix 1(1), page 137B); newspaper article entitled "Asesinato de Saúl Cantoral. ¿Quién quiere matar a la Federación Minera?" published in the magazine "Amauta" during the third week of February 1989 (file of appendixes to the application, Volume II, appendix 1(1), page 158); newspaper article entitled "¿Quién lo mató?" published in the magazine "Caretas" of February 20, 1989 (file of appendixes to the application, Volume II, appendix 1(1), page 175); newspaper article entitled "Crimen es político" published in the magazine "Cambio" during the third week of February 1989 (file of appendixes to the application, Volume II, appendix 1(1), page 157).

²⁷ Cf. newspaper article entitled "Secuestran and amenazan de muerte a dirigente minero" published in "El Nuevo Diario" of August 13, 1988 (file of appendixes to the application, appendix 1(19), page 313).

²⁸ Cf. note from the Shougang Hierro Perú S.A.A Mineworkers Union (file of preliminary objection, merits, reparations and costs, appendix 4 of the final written arguments presented by the State, page 939).

²⁹ Cf. copy on DVD of the declarations given by Saúl Cantoral-Huamaní to national newspaper on his activities as a union leader and declarations of the [alleged] victim denouncing the dangers inherent in trade union activities (file of appendixes to the brief with requests and arguments, appendix 4, page 711, corresponding to a CD); newspaper article entitled: "Crimen es político" published in the magazine "Cambio" during the third week of February 1989 (file of appendixes to the application, appendix 1(1), page 157).

62. On December 15, 1988, following the signature of an agreement with the Government, Saúl Cantoral-Huamaní received death threats from a group of persons who identified themselves as members of the Peruvian Communist Party-*Sendero Luminoso*, who arrived suddenly, while he was with other miners in a camp they had set up on the campus of the Universidad de San Marcos.³⁰ According to the testimony of Ulises Cantoral Huamaní before the Truth and Reconciliation Commission, “the members of *Sendero Luminoso* who had rebuked Saúl Cantoral for lifting the strike [...] ceased their threats when they heard the final report that Saúl presented to the Federation.”³¹

63. Several newspaper articles indicate that on January 28, 1989, during the thirteenth National Assembly of Mining Delegates held in the Civic Center, Saúl Cantoral-Huamaní declared publicly that the Rodrigo Franco Commando “was threatening him in both Lima and Marcona.”³²

64. On February 6, 1989, two people intercepted Saúl Cantoral-Huamaní in the center of Lima and threatened to kill him.³³ According to a newspaper article, Saúl Cantoral-Huamaní stated that these individuals had identified themselves as members of the “Rodrigo Franco Commando.”³⁴ Also, according to another newspaper article, “several weeks previously,” the Rodrigo Franco Commando had threatened Saúl Cantoral-Huamaní and other mining leaders.³⁵

65. In the case file before the Court, a document presented by the State alludes to death threats against Saúl Cantoral-Huamaní, without referring to the dates of these threats. This evidence mentions “notes and telephone calls to the offices of the Federation by the Rodrigo Franco Paramilitary Commando.”³⁶

66. Based on the preceding paragraphs, the Court finds it has been proved that, between August 1988 and February 1989, Saúl Cantoral-Huamaní received threats against his life and personal integrity related to his leadership during the national mining strikes and that

³⁰ Cf. document entitled “The Rodrigo Franco Commando,” dated August 2003, signed by Javier Ciurlizza Contreras, Executive Secretary of the CVR, and provided by the State as helpful evidence (file of preliminary objection, merits, reparations and costs, page 788); and newspaper article entitled “*Calle del secuestro*” published in the magazine “*Si*” on February 20, 1989 (file of preliminary objection, merits, reparations and costs, appendix 3 to the final written arguments presented by the State, pages 920 and 921).

³¹ Cf. document entitled “The Rodrigo Franco Commando,” dated August 2003, signed by Javier Ciurlizza Contreras, Executive Secretary of the CVR, and provided by the State as helpful evidence (file of preliminary objection, merits, and possible reparations and costs, page 790).

³² Cf. newspaper article entitled “*Testigo puede identificar a los asesinos*” published in “*Diario La República*” on February 15, 1989 (file of appendixes to the application, appendix 1(1), page 137B) and newspaper article entitled “*Diabólico crimen. Casi imposible de achacar a Sendero*” published in the magazine “*Oiga*” on February 20, 1989 (file of appendixes to the application, Volume II, appendix 1(1), page 179).

³³ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, Volume I, appendix 2, page 8); and newspaper article entitled “*Calle del secuestro*” published in the magazine “*Si*” on February 20, 1989 (file of preliminary objection, merits, reparations and costs, appendix 3 to the final written arguments presented by the State, page 920).

³⁴ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, Volume I, appendix 2, page 8); and newspaper article entitled “*Calle del secuestro*” published in the magazine “*Si*” on February 20, 1989 (file of preliminary objection, merits, reparations and costs, appendix 3 to the final written arguments presented by the State, page 920).

³⁵ Cf. newspaper article entitled “*Asesinato de Saúl Cantoral. ¿Quién quiere matar a la Federación Minera?*” published in the magazine “*Amauta*” in the third week of February 1989 (file of appendixes to the application, appendix 1(1), page 158).

³⁶ Cf. document entitled “The Rodrigo Franco Commando,” dated August 2003, signed by Javier Ciurlizza Contreras, Executive Secretary of the CVR, and provided by the State as helpful evidence (file of preliminary objection, merits, and possible reparations and costs, page 771).

he was even kidnapped on one occasion. These threats exposed him to a grave situation of danger that was public knowledge owing to articles in the media.

The kidnapping and death of Saúl Cantoral Huamaní and Consuelo García Santa Cruz

67. The Court finds it has been proved that the alleged victims were kidnapped and then executed during the night of February 13, 1989, after they had met with a person who was going to help Saúl Cantoral-Huamaní obtain a passport to travel to Zimbabwe for a trade union meeting.³⁷ According to the preliminary police investigations, at approximately 11.30 p.m. that evening, the National Police patrol service found the bodies of two persons in the parking lot of the Wiracocha Park. First the body of Saúl Cantoral-Huamaní was identified, with injuries caused by six bullets, and then the body of Consuelo García-Santa Cruz.³⁸ A piece of cardboard bearing the words “*perro soplón, vendido, viva la huelga minera, viva el PCP*” [informer, traitor, long live the mining strike, long live the PCP] and a drawing of the hammer and sickle were found near Mr. Cantoral-Huamaní’s body.³⁹

68. Regarding what happened in the moments before the death of the alleged victims, the Court notes that both the Commission and the representatives maintain that they were subjected to physical and psychological abuse before being deprived of their life.

69. The Court observes that in the case of Consuelo García-Santa Cruz, the police investigations concluded that her body “does not show any bullet wound, but there are trauma injuries to the head, possibly caused by the tire of a moving vehicle, which killed her” (*infra* para. 127).⁴⁰ Until 2006, the official version of the facts was that her death had been caused by being run over by a vehicle; moreover, according to the police report, “no ballistic testing was done on the deceased “NN” [no name], subsequently identified as Consuelo GARCIA-SANTA CRUZ, as she did not present any wounds that merited a ballistics report.”⁴¹

70. The State has acknowledged that the protocols of the autopsies conducted immediately after the death of the alleged victims were mislaid. The Court finds that, in 2006, according to the evidence submitted by the State, a new autopsy was performed by the Forensic Medicine Institute of the Attorney General’s Office. With regard to Saúl Cantoral Huamaní, the new autopsy found, *inter alia*, five bullet wounds, four in the skull and one in the left lumbar region. The report also found “a forcible blow by a device at low

³⁷ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, Volume I, appendix 2, page 8); note of the State No. 7-5-M/037 of February 4, 1994 (file of appendixes to the application, Volume II, appendix 1.5, page 223); and Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, pages 753-754).

³⁸ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, Volume I, appendix 2, page 8); note of the State No. 7-5-M/037 of February 4, 1994 (file of appendixes to the application, Volume II, appendix 1.5, page 223); and Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, pages 753-754).

³⁹ Cf. note of the State No. 7-5-M/037 of February 4, 1994 (file of appendixes to the application, Volume II, appendix 1.5, page 223); and Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, pages 747).

⁴⁰ Cf. Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, pages 756).

⁴¹ Cf. Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, pages 744).

speed, and posterior fracture of the manubrium of the sternum,"⁴² although it "does not rule out the relationship of this trauma" with one of the shots that entered the skull. With regard to Consuelo García-Santa Cruz, the report of the Forensic Medicine Institute establishes the presence of two bullet wounds in the skull. The representatives presented an expert report prepared by the Peruvian Forensic Anthropology Team that indicated that Mr. Cantoral-Huamaní had a fractured sternum, and that Mrs. García-Santa Cruz had two gunshot wounds and a fractured jaw.⁴³ Both the Commission and the representatives affirm that the results of this autopsy prove that Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz were tortured before being executed. The State denies the existence of the alleged torture and considers that "the evidence submitted in the [Inter-American Commission's] application is not sufficiently solid to affirm this violation." It also indicates that the acts mentioned by the Inter-American Commission are not mentioned in any part of the Final Report of the CVR and, to the contrary, the newspaper source on which the Commission bases this affirmation states that "the bodies did not show any signs of torture or abuse." Regarding the argument of the representatives, the State affirms that "there is evidence from newspaper sources that both supports and contradicts it" and indicates that, neither the witnesses mentioned by the Commission, nor those presented before the Court affirmed it at any point in their testimony.

71. The Court notes that the lack of information about the treatment that Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz received before being deprived of their life arises, to a great extent, from the absence of a serious and effective investigation into the facts of the case and, in particular, from the disappearance of the reports of the autopsy performed immediately after the facts, followed by the failure to perform new autopsies for several years. Indeed, not only were no measures taken to clarify what happened, but a considerable time after the first autopsies had been performed, the results were mislaid, as the State has acknowledged. This situation of uncertainty persisted for years. Only recently, in 2006, 17 years after the facts occurred, were the bodies exhumed in order to define the circumstances surrounding their deaths. The Court notes that, regarding the body of Saúl Cantoral-Huamaní, while the expert report of the forensic Medicine Institute indicates that "no injuries to the ribs have been found that could suggest a comprehensive trauma to the chest,"⁴⁴ the expert report of the Peruvian Forensic Anthropology Team determined the existence of an injury "[c]onsistent with a forcible trauma under the area of the fracture" and that this "impact could have resulted from an object of an irregular shape and undefined content."⁴⁵

The preliminary investigations

72. Regarding the actions of the State's investigative bodies in relation to the death of the alleged victims, the Court takes into consideration the acknowledgement of the facts made by the State and the body of evidence in the instant case. The Court finds it has been proved that seven prosecutors heard the case, at least formally; that more than 18 years have elapsed since the murder of Saúl Cantoral Huamaní and Consuelo García Santa Cruz and the investigations have still not advanced beyond the preliminary stage; that the

⁴² Cf. Report issued by the Specialized Forensic Team of the Forensic Medicine Institute of the Attorney General's Office in August 2006 (file of preliminary objection, merits, reparations and costs, pages 648-649).

⁴³ Cf. Expert report in the cases: Saúl Isaac Cantoral-Huamaní and Consuelo Trinidad García-Santa Cruz issued by the experts of the Peruvian Forensic Anthropology Team (file of preliminary objection, merits, reparations and costs, pages 256-257, 260-261).

⁴⁴ Cf. Report issued by the Specialized Forensic Team of the Forensic Medicine Institute of the Attorney General's Office in August 2006 (file of preliminary objection, merits, reparations and costs, pages 644).

⁴⁵ Cf. Expert report in the cases: Saúl Isaac Cantoral-Huamaní and Consuelo Trinidad García-Santa Cruz issued by the experts of the Peruvian Forensic Anthropology Team (file of preliminary objection, merits, reparations and costs, pages 256).

perpetrators have not been identified, and that no criminal charges have been brought against anyone (*infra* para. 126).

73. The Court observes that the evidence provided by the State reveals that the first police report of April 19, 1989, with information on the investigations into the murder of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, indicated that the authors were "terrorist criminals." A second undated police report, prepared prior to February 19, 1990, concluded that "[...] despite exhaustive investigations it has not been possible to identify the authors of the murder of Saúl Cantoral and Consuelo García-Santa Cruz, although it has been established that, based on the method used, the sign left near where the bodies were found, and the way in which they were murdered, the authors were terrorist criminals."⁴⁶

74. In 1994, as a result of a request for information on the status of the investigation, addressed by the Special Prosecutor of the Ombudsman's Office to the 36th Provincial Criminal Prosecutor's Office of Lima, inquiries were initiated into the location of the complaint, and it was found "among a group of complaints from previous years that had been filed." The said Prosecutor's Office made inquiries at police headquarters regarding progress in the investigations and was informed that no "investigation had been conducted, because [the officer to whom the task had been entrusted] had been relocated, and the said investigation had not been assigned to another officer." After a matter of competence had been resolved, another Prosecutor who had been entrusted with the case sent an official letter to DINCOTE on August 25, 1994, requesting that the latter forward the results of its investigations. On January 24, 1995, DINCOTE sent the Prosecutor report No. 11-D4-DINCOTE of January 2, 1995, in which it concluded that "[...] from the investigations and other procedures carried out, it is presumed that the authors of this act are members of the terrorist group, PCP-SL; although the possibility that it was perpetrated by another type of group is not rejected [...]." (the underlining was in the report submitted by the State). After receiving this police report on May 8, 1995, the respective Prosecutor, the 43rd Provincial Criminal Prosecutor of Lima, "decided to provisionally close the case file."⁴⁷

75. The Court also observes that, on July 19, 1989, in the context of another case concerning the alleged subversive activities that two students were preparing in relation to a "Tactical operational plan for selective assassination" with a list of names that included that of Saúl Cantoral-Huamaní, preliminary investigation proceedings against these two students were ordered for the crime of terrorism and, additionally, against one of them for the crime of fraud (*contra la fe pública*) against the State. The Court observes that, in the judgment absolving them, they were acquitted "of the charges against them for the crime of terrorism against the State."⁴⁸

76. The Court finds that, as a result of a private initiative by the next of kin of Saúl Cantoral-Huamaní, who filed a complaint before the Prosecutor General (*Fiscalía de la Nación*) on May 29, 2001, the State reopened the investigations. However, the Court notes that this did not mean the start of effective investigative measures because, once again,

⁴⁶ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, pages 921 and 922).

⁴⁷ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, page 924).

⁴⁸ Cf. Judgment of January 31, 1990, delivered by the Thirteenth Correctional Court of Lima (file of preliminary objection, merits, reparations and costs, pages 835 to 840).

issues of jurisdiction arose among the prosecutors.⁴⁹ As of September 5, 2005, more than 15 years after the murders, and more than four years after the complaint filed by the next of kin, the investigations in the case were reopened; they were then, and still are, in their initial stages.⁵⁰

The Report of the Truth and Reconciliation Commission

77. Regarding the facts of the case, the Truth and Reconciliation Commission (CVR) devoted a chapter of its Final Report to the Rodrigo Franco Commando. In this chapter the CVR examined several cases in which the Rodrigo Franco Commando took part; they included the death of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.⁵¹ In the Report, the CVR stated “that there are sufficient credible elements to affirm that the group calling itself the ‘Rodrigo Franco Commando’ existed in [Peru] as a paramilitary organization” and went on to refer to its formation, organization, and methods of operation. According to the CVR, this paramilitary commando was supported by a small number of police agents, members of GRUDE (the Police Special Operations Directorate Group) and DIRCOTE, acting under the command of the Minister of the Interior.⁵²

78. In particular, the CVR stated in its Final Report that “information existed for it to be plausibly assumed that individuals who allegedly belonged to this Commando were responsible [...for the] murders of the trade union leader, Saúl Cantoral-Huamaní, and of Consuelo García.”⁵³

ii) Concerning the State's responsibility for the acts to which Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz were subjected

⁴⁹ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, page 924).

⁵⁰ The Second Supraprovincial Prosecutor, who was finally put in charge of the investigation, ordered, among other matters, that the following measures should be taken: he requested DIRCOTE to forward the police deposition prepared by Delta 5; he received the preliminary statement made by Ulises Cantoral-Huamaní; he requested the Thanatological-Forensic Investigations Division to forward the autopsy reports and the results of other studies carried out on the bodies of the alleged victims (this Division indicated that, although it had requested the autopsy reports of the alleged victims from the Documentary Procedures Manager, they had not been forwarded. Consequently, the Second Prosecutor asked the latter to forward the reports directly, but the Deputy Manager of the Central Files advised that his files did not include the autopsy reports of the alleged victims.) He obtained from the Ombudsman's Office the transcript of the CVR public hearings of cases in Lima, a VHS tape, and an audio tape containing a CVR interview with Ulises Cantoral Huamaní; he received a preliminary statement from Rosa Amelia García-Santa Cruz, Consuelo Santa Cruz's sister; he sent an official letter to the Anglo-American Clinic requesting information on the medical care received by Saúl Isaac Cantoral-Huamaní between July and August 1988; he summoned several persons to make preliminary statements; he requested a graphology report from the Criminalistic Directorate of the Peruvian National Police on a manuscript found near the place where the bodies of the alleged victims were discovered, and also a ballistics report on the bullets and cartridge cases found at the site of the facts, and forensic reports on the body of Consuelo García Santa Cruz. Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, page 926-928).

⁵¹ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, appendix 2, pages 5 to 10);

⁵² Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, appendix 2, pages 13 to 15 and 17);

⁵³ Cf. Final Report of the Truth and Reconciliation Commission, *supra* para. 48, Volume VII, Section 2.19, “The murders committed by the paramilitary group calling itself the Rodrigo Franco commando (1985-1990)” (file of appendixes to the application, appendix 2, page 20);

79. According to Article 1(1) of the Convention, which has frequently been interpreted and applied by the Court, the States are obliged to respect and guarantee the human rights established therein. Consequently, the international responsibility of the State is based on acts or omissions of any of its powers or organs, irrespective of their status, that violate the American Convention. It is a principle of international law that the State responds for the acts and omissions of its agents acting in their official capacity, even if they overstep the limits of their authority.⁵⁴ In order to establish whether a violation of the rights embodied in the Convention has occurred, it is not necessary to determine, as it is under domestic criminal law, the guilt of the authors or their intention, nor is it necessary to identify individually the agents to whom the acts that violate the Convention are attributed;⁵⁵ rather, it is sufficient to show that acts or omissions have been verified that have permitted the perpetration of such violations or that the State has an obligation with which it has failed to comply.⁵⁶

A) *Obligation to respect the rights embodied in Articles 4, 5 and 7 in relation to Article 1(1) of the American Convention*

80. The parties do not agree that the perpetration of the kidnapping, the alleged ill-treatment and the death of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz can be attributed to the acts of State agents or of a group in which they participated or to which they acquiesced.

81. The Commission maintains that the facts occurred in the context of a pattern of systematic human rights violations that included the generalized and systematic practice of enforced disappearances and extrajudicial executions between 1989 and 1993. In this regard, the Commission affirms that “[t]his pattern of systematic human rights violations was in operation in the case of the victims, who were executed by the group calling itself the Rodrigo Franco Commando, composed of State agents.” Hence, the Commission concludes that, “given the prior activities of the victims, the context of the situation of internal conflict in Peru at the time of the facts, and the nature of the group that perpetrated these facts, it is evident that the motive for the crime was ‘to control’ the trade union disturbances that were occurring in the context of the labor dispute, a right guaranteed by the Peruvian Constitution, by ‘neutralizing’ the trade union leadership in order to discourage social protest.”

82. Based on these arguments, the Commission alleges that the alleged victims were “deprived of their liberty unlawfully and arbitrarily [...] by the members of a commando led by State agents,” in violation of Article 7 of the Convention, in relation to Article 1(1) thereof. It also states that the treatment to which the alleged victims were subjected in the moments prior to their execution constituted acts that violated Article 5(1) and 5(2) of the Convention. Lastly, it maintains that “the murder of the victims was an extrajudicial, summary and arbitrary execution, for which the State is responsible,” and asks the Court to declare that the State violated its obligation to respect the right to life of the alleged victims established in Article 4 in relation to Article 1(1) of the Convention, “by planning and

⁵⁴ Cf. *Case of Velásquez-Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras. 164, 169 and 170. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 67; *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 111; and *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 108.

⁵⁵ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 68; *Case of La Cantuta v. Peru*, *supra* note 8, para. 156 and *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54, para. 112.

⁵⁶ Cf. *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*, *supra* note 6, para. 91; *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, paras. 134 and 172. See also *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 68; *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54, para. 112; and *Case of the “Mapiripán Massacre” v. Colombia* *supra* note 54, para. 110.

extrajudicially executing the victims, using State agents." The Inter-American Commission based its argument primarily on the CVR Report and on the work of a parliamentary commission, known as the "Herrera Commission."

83. The representatives of the next of kin of the alleged victims endorse the Commission's arguments, also relying, *inter alia*, on the CVR Report. They added that Saúl Cantoral-Huamaní had announced publicly, in the context of the national mining strike called by the National Federation of Mining, Iron and Steel Workers of Peru (FNTMMSP), "the dangers to which the trade union leaders were exposed owing to the union struggles they were heading." The representatives inferred from such statements that it was assumed at the time "that the actions designed to intimidate and eliminate the trade union struggle were perpetrated by members of the group calling itself the 'Rodrigo Franco' Commando."

84. The State affirms that it does not agree with the description of the facts presented by the Commission and the representatives, therefore, it does not acknowledge that the facts can be attributed to the State or to its agents. Nevertheless, the State acknowledges the existence of four hypotheses that would attribute the facts to different groups, in two of which State agents participated. Thus, it admits the existence of the hypothesis attributing the facts to the Rodrigo Franco Commando. However, the State affirms, and provides supporting documents, that there are three other hypotheses that attribute the facts to *Sendero Luminoso*, to individuals who acted for "financial motives" under the orders of groups of mine owners, or to the Colina paramilitary group. The State considers that these hypotheses "have not been properly taken into account in previous investigations." Based on the above, the State affirms "the existence of various hypotheses in relation to the alleged death and, consequently, the existence of doubts that do not allow it to accept international responsibility."

85. In addition, the State holds that, since the Attorney General's Office is currently conducting an investigative procedure, the version of the Inter-American Commission on Human Rights cannot be proved. In this regard, the State affirms that "this aspect must be investigated further, not to exempt itself from responsibility, but to give genuine credence to each of the probative elements submitted by the [Inter-American Commission]." Regarding the existence of the Rodrigo Franco Commando, it affirms that "it has instructed the Second Supraprovincial Criminal Prosecutor to investigate the alleged existence of the said Commando," and that "it is awaiting the results." Lastly, the State asked the Court "that it consider that the Commission's requests relate to situations that are already being dealt with, since a complete, effective and impartial investigation is being conducted in the domestic jurisdiction in order to establish the historical truth of the facts, and to prosecute and punish those responsible for the facts relating to the murder of the victims on February 13, 1989."

86. The Court recalls that international case law has upheld the authority of the international courts to assess the evidence freely, without adopting a rigid determination of the *quantum* required as grounds for a judgment;⁵⁷ nevertheless, the Court must pay special attention to the circumstances of the specific case and bear in mind the limits

⁵⁷ Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, para. 127; Also cf. *Case of the Miguel Castro- Castro Prison v. Peru*, *supra* note 6 para. 184; *Case of Almonacid-Arellano et al. v. Chile*, *supra* note 13, para. 69; and *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 35. Cf. *Case of the Miguel Castro- Castro Prison v. Peru*, *supra* note 6, para. 184; *Case of Almonacid-Arellano et al. v. Chile*, *supra* note 13, para. 69; and *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 35.

imposed by respect for legal certainty and the procedural equality of the parties.⁵⁸ The Court cannot ignore the special gravity of finding that a State Party to the Convention has carried out or tolerated in its territory practices such as those referred to in the instant case. Thus, the Court must apply a standard of proof that takes this factor into account and, notwithstanding this, is capable of establishing the truth of the alleged facts convincingly.⁵⁹

87. With respect to the controversy over the attribution of responsibility to the State in relation to the rights examined in this chapter, the Court observes that it is not incumbent on it to examine hypotheses relating to authorship, which is the responsibility of the domestic criminal courts, but rather to assess the acts or omissions of State agents (*supra* para. 79). In the instant case, this examination will consider, in particular, the findings of official institutions as they relate to the facts of this case, according to the evidence submitted by the parties.

88. The State has questioned the conclusions of the Peruvian CVR Report with regards to the responsibility of the Rodrigo Franco Commando for the execution of Mr. Cantoral-Huamaní and Ms. García-Santa Cruz.

89. In this matter, the Court underscores, first, that the CVR is an official agency created by the State that produced its report in the course of a specific mandate entrusted to it by the State itself. Indeed, the President of the Republic, by Supreme Decree No. 065-2001-PCM of July 4, 2001, modified by Supreme Decree No. 101-2001-PCM, created the CVR to clarify the process, the facts, and the responsibilities of the terrorist violence and the human rights violations that occurred between May 1980 and November 2000 that could be attributed to both terrorist organizations and State agents, and also to propose initiatives to consolidate peace and harmony among Peruvians. The Commission issued its Final Report on August 27, 2003.⁶⁰

90. Second, Article 3 of Decree No. 065-2001-PCM, which regulated the activities of the CVR, established explicitly that this Commission “does not have jurisdictional authority; consequently, it does not substitute the functions of the Judiciary and the Attorney General’s Office.” In this understanding, in the chapter of the document provided by the State to these proceedings entitled “The Rodrigo Franco Commando,”⁶¹ the CVR recommended to the Attorney General’s Office, *inter alia*, that it should “file criminal charges” against four persons for the crimes of the aggravated homicide of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, and another person.

91. Third, the Court observes that the Final Report of the CVR was presented to the different powers of the State which acknowledged its conclusions and recommendations and acted accordingly, adopting policies that reflect the significance accorded to this institutional document. Indeed, according to the evidence provided by the State in this procedure:

- (a) The Congress of the Republic enacted Law 28,592, whose objective was “to establish the Normative Framework of the Integral Reparations Plan (PIR) [...] in

⁵⁸ Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, para. 127; likewise, cf. *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6 para. 184; *Case of Almonacid-Arellano et al. v. Chile*, *supra* note 13, para. 69; and *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 35.

⁵⁹ Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, para. 129.

⁶⁰ Cf. *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 197.3; and *Case of Baldeón-García v. Peru*, *supra* note 6, paras. 72(1) and 72(2).

⁶¹ Cf. document entitled “the Rodrigo Franco Commando” of August 2003, signed by Javier Ciurlizza Contreras, Executive Secretary of the CVR, and provided by the State as helpful evidence (file of preliminary exception, merits, reparations and costs, page 815).

- keeping with the conclusions and recommendations of the Truth and Reconciliation Commission Report”;⁶²
- (b) In the sphere of the Executive Branch, “Supreme Decree No. 062-2004-PCM used the final report of the TRC as a basis for approving the Programmatic Framework for State action in relation to integral reparations [...]”;⁶³
 - (c) With regards to the facts discussed before the Court in the instant case, the Prosecutor General’s Office “by a resolution of December 30, 2003 [...] decided to forward the Truth and Reconciliation Commission Report about the “Rodrigo Franco Commando” to the Provincial Prosecutor Specialized in Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves.”⁶⁴

92. The Court has given special weight to the CVR report as relevant evidence in the determination of the acts and international responsibility of the Peruvian State in several cases that have been submitted to its consideration.⁶⁵ The Court also notes that, since the publication of said Report in 2003, no judicial decision has negated the participation of State agents in the execution of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz or established that the perpetrators were individuals other than State agents in the context of the investigations conducted by the Attorney General’s Office.

93. Additionally, in support of their claims with respect to the “Rodrigo Franco Commando,” the Commission and the representatives invoked the majority report entitled “Agustín Mantilla and his connection to the self-called ‘Rodrigo Franco Democratic Commando,’” of a commission of the Congress of the Republic of Peru (the “Herrera Commission”), published in July 2003.⁶⁶ This majority report of the Congress has a section entitled “comprehensive examination of cases” attributed to the said Commando, which include the murder of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz. The State did not contest this report.

94 Irrespective of the specific conclusions regarding the perpetrators of the murders, the Court notes that the majority and minority report of the Herrera Commission both agree on the existence of paramilitary activities at the time of the facts. In this respect, the minority report, referred to by the State to support one of its hypothesis that the perpetrators were not State agents, indicates that “evidence has been found of the activities of a paramilitary commando from 1986 to 1990, [although] neither DIRCOTE nor DIGMIN have been able to determine the identity of its members [...]”⁶⁷ Additionally, the report indicates that a member of the GRUDE police unit, who testified before the Herrera

⁶² Cf. act created the Integral Reparations (PIR), Act No. 28592 issued on July 20, 2005 (file of appendixes to the brief answering the application, appendix 14, page 1004).

⁶³ Cf. supreme decree No. 047-2005-PCM, sixth whereas clause (file of appendixes to the brief answering the application, appendix 13, page 999).

⁶⁴ Cf. Report No. 05-2005-2^o FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 7, pages 925).

⁶⁵ The TRC Report has been used for the determination of acts proved in judgments such as *Case of La Cantuta v. Peru*, *supra* note 8, notes 17-24, 26, 87-88, 90, 92-94, 96, 112-113; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, notes 21, 27-28, 30-33, 35, 37, 39, 43, 49-50, 53-56, 59-61, 63-74, 100, 107, 110; *Case of Baldeón-García v. Peru*, *supra* note 6, notes 16-27; *Case of Gómez-Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, notes 12-16, 18, 22; *Case of De la Cruz-Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, note 29.

⁶⁶ Cf. Congress of the Republic, Commission to investigate the cases of corruption of the 1990-2000 decade, Report: Agustín Mantilla and his connection to the self-called Rodrigo Franco Democratic Commando – majority report (file of helpful evidence submitted by the State on June 8, 2007, pages 1313-1400).

⁶⁷ Cf. Congress of the Republic, Commission to investigate the cases of corruption of the 1990-2000 decade, Final Report on the alleged connection with paramilitary groups of Agustín Mantilla Campos – minority report (file of helpful evidence submitted by the State on June 8, 2007, page 1398).

Commission, admitted to having taken part in the kidnapping and deprivation of liberty prior to the death of Saúl Cantoral Huamaní and Consuelo García Santa Cruz.⁶⁸

95. In support of its claims, the State also invoked the majority report of the “Commission to investigate the murders of the deputies, Heriberto Arroyo Mio and Pablo Li Ormeño, and the terrorist groups that use the name of a martyr.” The majority report of this congressional commission indicated that two university students were detained and an alleged assassination plan that mentioned Saúl Cantoral-Huamaní was discovered on them. This plan described the steps to be taken to end his life and the support necessary to carry out the act, which envisioned his execution in a public place. For its part, the minority report maintained that “the existence has been proved [...] of an organization that carries out activities characterized by their terrorist rather than subversive nature, which claims to have executed a considerable number of criminal attacks under the name of the ‘Rodrigo Franco Democratic Commando’ and that “there is significant evidence connecting this organization to individuals invested with public authority.”⁶⁹

96. The Court takes into consideration the fact that those two students were subjected to a preliminary investigation for crimes of terrorism and one of them was also charged with crimes **against the public trust and the State**, though both were absolved of the terrorism charges (*supra* para. 75). The Court observes that this preliminary investigation was not directly related to the investigation into the deprivation of life of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.

97. Finally, the Court underscores that, in support of its claims, the State provided an expert report prepared by the Specialized Forensic Team of the Forensic Medicine Institute of the Attorney General’s Office in August 2006, which concludes by stating that “[a]ll the elements collected to date point to the fact that the responsibility for these deaths can be attributed to some type of organization linked to the State apparatus at the time of the events.”⁷⁰

98. The Court observes that, 18 years after the events occurred, the State has not expedited judicial proceedings that clearly determine the facts and responsibilities, and it has submitted different hypotheses to the Court regarding the perpetrators of the acts. The State utilizes, *inter alia*, two congressional reports and various police documents to allege attribution of the acts to non-State agents. As previously noted (*supra* paras. 75 and 96), the indictment that, among other elements, served as a basis for the hypothesis in these congressional reports, concluded in a judicial decision absolving the two students of the charges, *inter alia*, of terrorism. The hypothesis proposed in the police reports culminated in the filing of the proceedings ordered by the Attorney General’s Office. To the contrary, the attribution of responsibility for the facts to State agents is included in official documents such as the majority report of the parliamentary commission known as the “Herrera Commission”, the expert report of the Forensic Medicine Institute and, in particular, the CVR, whose report has the backing of the Peruvian public authorities (*supra* paras. 91, 93 and 97) and has not been invalidated in court. Consequently, considering the conclusions of

⁶⁸ Cf. Congress of the Republic, Commission to investigate the cases of corruption of the 1990-2000 decade, Report: Agustín Mantilla and his connection to the self-called Rodrigo Franco Democratic Commando – majority report (file of helpful evidence submitted by the State on June 8, 2007, page 1341).

⁶⁹ Cf. Majority and minority reports of the Commission to investigate the murder of the deputies, Eriberto Arroyo Mío and Pablo Li Ormeño and the terrorist groups that use the name of a martyr (file of helpful evidence submitted by the State on June 8, 2007, pages 1176 to 1179 and 1306).

⁷⁰ Cf. Expert report prepared by the Specialized Forensic Team of the Forensic Medicine Institute of the Attorney General’s Office in August 2006, chapter corresponding to the “Socio-anthropological Investigation”, submitted by the State on January 23, 2007, during the public hearing held before the Court (file of preliminary objection, merits, reparations and costs, page 620).

the official institutions that have examined the facts of this case, the Court does not find sufficient elements to arrive at any conclusion other than attributing responsibility to State agents for the acts against Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz. The foregoing leads the Court to conclude that the State failed to comply with its obligation to respect the rights to personal liberty and life owing to the unlawful and arbitrary detention and death of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, which constitutes a violation of Articles 7 and 4, in relation to Article 1(1) of the American Convention.

99. In relation to the dispute concerning the possible violation of the right to humane treatment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, the Court considers that, irrespective of the discussion on the evidence concerning the existence of physical injury, the alleged victims were intercepted and taken against their will during the night, and subsequently executed (*supra* para. 67), so that it is reasonable to assume that, during the moments before they were deprived of their life, they suffered profound fear in the face of the real and imminent danger that events would culminate in their death, as effectively occurred. This leads the Court to conclude that the State failed to comply with its obligation to respect the right to humane treatment of Saúl Cantoral Huamaní and Consuelo García Santa Cruz, which constitutes a violation of Article 5 in relation to Article 1(1) of the American Convention.

B) The obligation to guarantee the rights embodied in Articles 4, 5, and 7 of the American Convention

100. As stated above (*supra* para. 79), in addition to the duty to respect the rights embodied in the Convention, the State also has the duty to guarantee these rights. The Court has established that “one of the conditions for effectively guaranteeing the right to life, personal integrity and personal liberty is compliance with the obligation to investigate their violation established in its Article 1(1), together with the substantive right that must be protected or ensured.”⁷¹

101. The obligation to guarantee rights carries with it the positive obligation for the State to undertake a series of actions, depending on the specific substantive right at issue. In the present case, in which the wrongful deprivation of the liberty of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, followed by their subjection to treatment that violated their personal integrity, and their subsequent execution are at issue, the obligation to guarantee the rights protected in Articles 4, 5, and 7 of the Convention entails the obligation to investigate the facts that affected these substantive rights.

102. The obligation to investigate constitutes a means of guaranteeing the rights protected in Articles 4, 5, and 7 of the Convention. The State incurs international responsibility when it fails to comply with this obligation.⁷²

⁷¹ Cf. *Case of Penal Miguel Castro-Castro v. Peru*, *supra* note 6, para. 253; *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 119; *Case of Ximenes-Lopes v. Brazil*, *supra* note 13, para. 147; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, para. 297.

⁷² Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, paras 166 and 176; *Case of Godínez Cruz v. Honduras*. Judgment of January 20, 1989. Series C No. 5, para. 175; Cf. also *Case of La Cantuta v. Peru*, *supra* note 8, para. 110; *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54, para. 142; *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 74; *Case of Goiburú et al. v. Paraguay*. Judgment of September 22, 2006. Series C No. 153, para. 88; *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 108; *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 66; *Case of Ximenes-Lopes v. Brazil*, *supra* note 13, para. 177; *Case of the “Mapiripán Massacre” v. Colombia*, *supra* note 54, paras. 232 to 234; *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*, *supra* note 6, para. 225.

103. In the instant case, the Commission alleged that the State “failed in its obligation to guarantee the right to life which arises from Article 4(1) in relation to Article 1(1) of the Convention [...] due to its failure to investigate and punish the masterminds and perpetrators of the execution.”

104. With respect to compliance with this obligation to investigate, it is important to emphasize that the State admitted that it was “[...] undeniable that there has been very little progress in the investigation into the murders during the past 17 years; during this time, the results of the investigations by both the Police and the Attorney General’s Office have been unsuccessful.”

105. The assessment of the obligation to guarantee the right to life, humane treatment, and personal liberty in this case, by conducting a genuine, complete and effective investigation into the events, is made in Chapter IX of this judgment. To determine the violation of Articles 4, 5 and 7 of the Convention, in relation to Article 1(1) thereof, it is sufficient to indicate that, in this case, the State has not guaranteed the said rights.

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106. Based on the above, the Court declares that Peru has violated the rights to personal liberty, humane treatment, and life owing to its failure to comply with its obligation to respect and guarantee rights embodied, respectively, in Articles 7, 5(1) and 5(2), and 4 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Saúl Isaac Cantoral-Huamani and Consuelo Trinidad García-Santa Cruz.

VIII

ARTICLE 5 (RIGHT TO HUMANE TREATMENT)⁷³ IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) OF THE AMERICAN CONVENTION (NEXT OF KIN)

107. The Commission and the representatives state that the next of kin of Saúl Cantoral-Huamani and Consuelo García-Santa Cruz were affected by the facts of this case and individualize the members of the respective families for whom they request reparations. In the case of Mr. Cantoral-Huamani, his next of kin are his parents, his wife, four children, and seven siblings.⁷⁴ In the case of Mrs. García-Santa Cruz, the next of kin are her parents and eight siblings.⁷⁵ Finally, in the Commission’s application and in the brief with final arguments of the representatives, Luis Mori Santa Cruz was included as a brother of Consuelo García-Santa Cruz.

⁷³ The relevant part of Article 5 of the Convention establishes that:

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.

⁷⁴ They are: Elisa Huamani-Infanzón and Patrocinio Cantoral-Contreras (mother and father); Pelagia Mélida Contreras-Montoya de Cantoral (wife), Marco Antonio Cantoral-Lozano, Brenda Cantoral-Contreras, Vanessa Cantoral-Contreras, Rony Cantoral-Contreras (children); Juan Cantoral-Huamani, Ulises Cantoral-Huamani, Eloy Cantoral-Huamani, Gertrudis Victoria Cantoral-Huamani, Angélica Cantoral-Huamani, Rafael Cantoral-Rojas, Yolanda Cantoral-Rojas (siblings). In addition, Isaac Cantoral-Huamani was included among the siblings of Saúl Cantoral-Huamani in the Commission’s application.

⁷⁵ They are: Amelia Beatriz Santa Cruz de Portocarrero, widow of García, Alfonso García-Rada (mother and father of Consuelo García-Santa Cruz) and Alberto García-Santa Cruz, Rosa Amelia García-Santa Cruz, Manuel Fernando García-Santa Cruz, María Elena García-Santa Cruz, Alfonso Ladislao García-Santa Cruz, Mercedes Grimaneza García-Santa Cruz, Jesús Enrique García-Santa Cruz, Walter Ernesto García-Santa Cruz (siblings).

108. The Commission states that, as the testimonies and the expert opinion of the psychologist have shown and, “as the State itself accepted before the Court,” the “personal integrity” of the next of kin of Mr. Cantoral-Huamaní and Mrs. García-Santa Cruz was “[...] affected as a direct result of the unlawful and arbitrary deprivation of liberty of their loved ones [...], the ill-treatment and torture suffered by the latter, their subsequent extrajudicial execution, and the absence of a judicial investigation into what happened for more than 18 years to date.” It also states that “the suffering undergone by the said next of kin during the detention and death, as well as the impotence and anguish endured for years owing to the lack of action by the State authorities to clarify the facts and to punish those responsible [...], are reasons why the next of kin should be considered victims of the violation of the right to mental integrity.”

109. The representatives of the alleged victims affirm that “[...] the families of Saúl Cantoral and Consuelo García have also suffered not only from the death of their loved ones and the circumstances in which this occurred, but also owing to the filling of the investigations, in order to ensure the impunity of the facts for 18 years [...].”

110. When examining Article 5 of the American Convention, and recalling the case law of the Court that the next of kin of the victims of human rights violations can, in turn, be victims, the State indicated that “[i]n this case, given the sufferings of the victims, we can affirm that these sufferings extend to the closest members of the family, particularly those who had close affective ties with the victim. This is due to the fact that the victims died in unclear circumstances and also because the authors of the crime have not been identified, investigated and punished.” However, the State also affirmed that it had not violated Article 5 of the American Convention with regard to the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz (*supra* paras. 27 and 28).

111. Lastly, the State requested the Court to “[...] take into account the documentary evidence supporting the relationship and pre-existence of the next of kin of the victims, indicated by the Commission.” The State referred, in particular, to the following next of kin: (i) “in the case of the siblings of the victim García-Santa Cruz, their existence and close affective ties with the victim have not been proved”; (ii) “regarding the parents of the victim Saúl Isaac Cantoral-Huamaní, their pre-existence to the regrettable event of his death must be proved, since this documentation does not appear in the case file” and (iii) with regard to the siblings of the victim Consuelo García-Santa Cruz, it respectfully requests that, in consideration of the Court’s case law, the close affective ties that existed with the victim should be proved, so that [the Court] can assess the merits at the appropriate time.”

112. The Court reiterates that the next of kin of the victims of certain human rights violations can, in turn, be victims.⁷⁶ In this regard, in other cases, the Court has considered that the right to mental and moral integrity of the next of kin of victims has been violated based on the additional suffering they have endured as a result of 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 the facts.⁷⁷

113. The Court finds that the following specific facts have been proved. First, the violent death of the victims was surrounded by uncertainty and the absence of information and, to a great extent, this still continues (*supra* paras. 69 and 70). The psychologist’s expert opinion is illustrative with regard to the family of Consuelo García-Santa Cruz when it

⁷⁶ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 102; *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 137; and *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 335

⁷⁷ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 137; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 335; and *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 96.

explains that, during the interviews, the family “generally expresses itself in a confused manner when talking about what happened. They don’t know what happened; they accept other people’s versions, without asking questions, without constructing their own version; we don’t know what happened. First, they said that she had been killed; then they said that she had been run over.” Some of them said “they did not know she had been murdered until the exhumation.”⁷⁸

114. Second, an effort was made to assign a defamatory character to the deaths and this affected the next of kin: for example, a sign left beside one of the bodies; the suspicion of being “terrorists” that the next of kin felt weighed on their loved ones and themselves, or that Saúl Cantoral-Huamani was damaging the country’s economy with his trade union activities, among other matters. In this regard, the psychologist’s expert opinion and the testimonial statements prove that the next of kin of Saúl Cantoral-Huamani and Consuelo García-Santa Cruz were isolated by their friends and other relatives under the suspicion that they could be “terrorists.” One of Mr. Cantoral-Huamani’s daughters recalls that “a great deal was said when my father died; not only about the sign, but also about Consuelo, that she was a terrorist; so many things were said; before my father died there was propaganda on the television saying that the mining strikes were led by terrorists; that the country was losing many millions of dollars [...]”⁷⁹

115. Third, it is important to underscore the threats suffered by the next of kin and their fears in the context of the investigation into the death of Saúl Cantoral, which reached the extreme of the family isolating itself as a measure of protection. In his testimony, one of Saúl Cantoral-Huamani’s siblings related that: “[...] our life changed totally and radically. We could not even go to the police station, because we were frightened that something could suddenly happen to us. This was how we felt at the time. Furthermore, my sister, Victoria, was beaten up in her own home [...] In the same way, when my mother died in 1989, my brother who arrived from Brazil was almost abducted in the airport [...]”; and a daughter declared: “we began to feel guilty about wanting to seek justice. My uncle Ulises took charge of all this; to advise us about the situation; although he did not communicate with us much, because he was afraid that if he was seen close to us this would, in some way, cause something to happen to us.”⁸⁰

116. The attitude of the State must be added to the said circumstances; in addition to failing to make any progress in the investigations or to resolve any of the hypotheses of how the facts occurred for 18 years, it mislaid important elements of the investigation, such as the original autopsy reports, causing frustration and impotence, as well as the need to conduct an exhumation, which caused profound anxiety and feelings of anguish.⁸¹

⁷⁸ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 429).

⁷⁹ Cf. Expert psychological report provided by Roberto Alfonso Gushiken Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 434); and sworn written statement made by Vanessa Cantoral-Contreras on December 14, 2006 (file of preliminary exception, merits and possible reparations and costs, page 383).

⁸⁰ Cf. testimony given by Ulises Cantoral-Huamani during the public hearing held before the Inter-American Court on January 23 and 24, 2007; expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 434); and sworn written statement made by Vanessa Cantoral-Contreras on December 14, 2006 (file of preliminary exception, merits, reparations and costs, page 384).

⁸¹ Cf. testimony given by Ulises Cantoral-Huamani during the public hearing held before the Inter-American Court on January 23 and 24, 2007; interview with Pelagia Mérida Contreras-Montoya de Cantoral included in the expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, pages 426 and 429).

117. According to the body of evidence in the case, the arguments of the Commission and the representatives, and the declaration of the State regarding the suffering caused to the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz owing to the death of the latter "in rather unclear circumstances," and the absence of the investigation and punishment of those responsible, the Court concludes that there has been a violation of the personal integrity of the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.

118. The Court finds it has been proved that this harm to their person integrity was suffered by the spouse, parents, children and siblings of Saúl Cantoral-Huamaní, and the parents and siblings of Consuelo García-Santa Cruz. The expert opinion of the psychologist is particularly illustrative, because it highlights the break-up of the family due to the death of Saúl Cantoral since his wife was obliged to "[...] go out to work while she completed her professional studies [...]. She studied during the day and worked in the evening, so that her children were left alone, even at Christmas [and] on Mothers' Day." For the siblings of Saúl Cantoral "the effects of his death [...] are related to the search for justice that became a central part of the life of some of them. Their entire life, the care of their children and family, are the costs they have incurred for undertaking this struggle [...]."⁸²

119. Regarding the family of Consuelo García-Santa Cruz, the psychologist's expert opinion reveals that the circumstances of the death of a loved one affected her mother and her six siblings who were interviewed in the same way: "it can be observed that they all said the same thing in the individual interviews. There is not much difference between them [...] they have the same difficulties [...] even their feelings and the effects on them are similar."⁸³

120. Based on the foregoing, the Court concludes that the right to humane treatment was violated with regard to the following next of kin of Saúl Cantoral Huamaní and Consuelo García Santa Cruz. In the case of Saúl Cantoral-Huamaní, these next of kin are: Pelagia Mélida Contreras-Montoya de Cantoral (wife); Elisa Huamaní-Infazón and Patrocinio Cantoral-Contreras (parents, both deceased); Marco Antonio Cantoral-Lozano, Vanessa Cantoral-Contreras, Brenda Cantoral-Contreras and Rony Cantoral-Contreras (children); Juan Cantoral-Huamaní, Ulises Cantoral-Huamaní, Eloy Cantoral-Huamaní, Gertrudis Victoria Cantoral-Huamaní and Angélica Cantoral-Huamaní (siblings). In the case of Consuelo García-Santa Cruz, these next of kin are: Amelia Beatriz Santa Cruz-Portocarrero (mother) and Alfonso García-Rada (father, deceased); Rosa Amelia García-Santa Cruz, Manuel Fernando García-Santa Cruz, María Elena García-Santa Cruz, Walter Ernesto García-Santa Cruz, Mercedes Grimaneza García-Santa Cruz and Jesús Enrique García-Santa Cruz (siblings).

121. Finally, the Court will refer to the persons who will not be considered victims in the instant case. Regarding Rafael Cantoral-Rojas, Yolanda Cantoral-Rojas, Alberto García-Santa Cruz and Alfonso García-Santa Cruz, despite helpful evidence provided by the representatives certifying their relationship with Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz respectively, the Court observes that the body of evidence in the case does not prove that their personal integrity has been affected in the terms of Article 5 of the American Convention. In addition, the Court observes that the Commission had included Luis Mori Santa Cruz among the beneficiaries in the application brief. Although the representatives did not mention him in their brief with requests, arguments and evidence

⁸² Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 436).

⁸³ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 425).

among the siblings of Consuelo García-Santa Cruz, they included his name on the list of beneficiaries contained in the brief with final arguments. According to the sworn statement made by Amelia Santa Cruz-Portocarrero, the victim's mother, Luis Mori Santa Cruz is a relative of her brother, Luis Santa Cruz-Portocarrero, but not a brother of the victim, nor did he live in the same house. The Court observes that even though Luis Mori Santa Cruz and Consuelo García-Santa Cruz could be related, it does not find that a violation of the personal integrity of the former has been proved as a result of the facts of this case. Lastly, with regard to Isaac Cantoral Huamaní, who had been included in the Commission's application, it has been proved before the Court that he died in 1975 and was not alive at the time of the death of Saúl Cantoral-Huamaní; therefore he was not included in the briefs with final arguments of the Inter-American Commission or the representatives.

IX
ARTICLES 8 (RIGHT TO A FAIR TRIAL)⁸⁴ AND 25 (JUDICIAL PROTECTION)⁸⁵
IN RELATION TO ARTICLES 4 (RIGHT TO LIFE), 5 (RIGHT TO HUMANE TREATMENT)
AND 7 (PERSONAL LIBERTY), AND ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)
OF THE AMERICAN CONVENTION

122. The Inter-American Commission states that the State violated Articles 8(1) and 25 in relation to Article 1(1) of the American Convention to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, and their next of kin. The representatives of the alleged victims endorsed the arguments of the Commission, and stated that, since the obligation to investigate and punish those responsible had not been complied with, a situation of impunity existed that failed to guarantee the non-repetition of similar facts in the future.

123. The State acknowledged that "the limited progress in the investigation into these murders during 17 years cannot be denied; during this time, investigations by both the police and the Attorney General's office have been unsuccessful." Nevertheless, the Court notes that the State also indicated that "it is only partially responsible for failing to respect the judicial guarantees and judicial protection of the victims and their next of kin." In its opinion, owing to "the existence of an independent and impartial investigative procedure before the Attorney General's Office, the violation has ceased and has not been consummated [...]" (*supra* para. 26)

124. First, the Court recalls that, as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.⁸⁶

⁸⁴ The relevant provisions of this article establish that:

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.

⁸⁵ The relevant provisions of this article establish that:

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.

⁸⁶ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 145; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 381; and *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Judgment of November 24, 2006. Series C No. 158, para. 106.

125. In this case, given the characteristics of the acknowledgement made by the State, the Court finds it essential to examine on the alleged violations.

126. Regarding the actions of the State's investigative bodies in relation to the death of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, and considering the acknowledgement of the facts made by the State and the body of evidence in this case, the Court finds that it has been proved that, 18 years after the murder of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, the investigation into the case is still in its initial phase, and has not made any progress in the identification of the authors, nor have criminal charges been filed against anyone. To the contrary, throughout these years, questions relating to the competence of different prosecutors' offices arose repeatedly, and reached the extreme that seven different prosecutors having intervened, although only formally, some of whom decided to close the case file. From the evidence produced in this case, the Court observes that, after taking some initial steps, the police investigative bodies merely issued communications with general assumptions regarding the authorship of the facts.⁸⁷

127. The Court observes that the absence of investigative measures was accompanied by the disappearance of probative elements that had been obtained; particularly, the reports of the autopsies on Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz,⁸⁸ which, according to information provided by the State, have recently resulted in the opening of an investigation (*investigación fiscal*) for the crime against the administration of justice of concealment (*encubrimiento real*). The Court wishes to emphasize the particular gravity of the disappearance of these probative elements, which made it necessary to conduct an exhumation and perform new autopsies several years later. The Court notes that, in the case of Consuelo García-Santa Cruz, the recent autopsy reports all indicate that she was shot, a conclusion that differs completely from the official version of the facts upheld for several years by the authorities in charge of the investigation. Indeed, Report No. 11-D4-DINCOTE provided to the body of evidence by the State, indicates that the body of "Consuelo García-Santa Cruz does not reveal any impact by a bullet, but does reveal serious head injuries possibly caused by the tire of a moving vehicle, and this killed her [...]."⁸⁹

128. The Court considers that it has been proved that, despite the complaint filed by the next of kin of Saúl Cantoral-Huamaní in 2001, which led to the reopening of the investigations, jurisdictional issues arose one again and effective measures of investigation were not adopted (*supra* para. 76).⁹⁰

⁸⁷ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, pages 921 to 929).

⁸⁸ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supra-provincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, page 928); and Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, page 748).

⁸⁹ Cf. Report No. 11-D4-DINCOTE, issued by the National Counter-terrorism Directorate on January 2, 1995 (file of appendixes to the brief answering the application, appendix 1, page 740).

⁹⁰ The 45th Prosecutor's Office forwarded the investigation to the 43rd Prosecutor's Office, which had been responsible for the case in the first place; this Office then forwarded the investigation to the Dean/Superior Prosecutor (*Fiscal Superior Decano*) of the Lima Judicial District, "so that his office could establish competence in the case." On August 19, 2002, the Dean/Superior Fiscal forwarded the case file to the 28th Prosecutor's Office, specialized in the crime of terrorism, and the only action taken by the latter was to request the 43rd Prosecutor's Office to send "all the files corresponding to the investigation." When forwarding the file, the 43rd Prosecutor's Office sent it to the 2nd Prosecutor's Office, because the latter was investigating a report on the acts allegedly committed by the Rodrigo Franco Commando. Subsequently, the Specialized Provincial Prosecutor's Office for Enforced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves took over the investigation into the acts allegedly committed by the Rodrigo Franco Commando, but in 2005 the case was returned to the 2nd Prosecutor's Office, where it is now. Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the

129. It has also been proved before the Court that, as of September 5, 2005, more than 14 years after the murders, and more than four years after the next of kin's complaint, the investigations into the case were reopened, and are still in the initial stages (*supra* para. 76).⁹¹

130. The Court recalls its consistent case law that, in cases such as this, compliance with the obligation to investigate must include the obligation to initiate, *ex officio* and immediately, a genuine, impartial and effective investigation,⁹² using all available legal means,⁹³ and involving every State institution.⁹⁴

131. In this regard, the Court reiterates that the obligation to investigate is an obligation of means, rather than results.⁹⁵ However, this does not signify that the investigation can be undertaken as "a mere formality predestined to be ineffective."⁹⁶ Each act of the State that forms part of the investigative process, as well as the investigation as a whole, should have a specific purpose: the determination of the truth, and the investigation, pursuit, capture, prosecution and, if applicable, punishment of those responsible for the facts.

132. The Court has also stated that access to justice should ensure, within a reasonable time, the right of the alleged victims or their next of kin for every necessary measure to be taken to know the truth about what happened and to sanction those eventually found to be responsible.⁹⁷

133. All these requirements, together with criteria of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings, conducted to determine the circumstances of a death and the existence of sufficient evidence. In the absence of these requirements, the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.

134. As can be seen from the above, Peru failed to investigate the circumstances and those responsible for the deaths of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz. The investigation initiated in 1989 was a mere formality conducted by the police and prosecution authorities, which made no progress and was closed, so that it can be considered inexistent. The Court notes that, in the body of evidence in the instant case,

Regular Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, pages 924 and 925).

⁹¹ Cf. Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, pages 926 to 928); and Report No. 03-2007-2° FPS-MP-FN issued by the Second Supraprovincial Criminal Prosecutors Office on February 20, 2007 (file of preliminary exception, merits, reparations and costs, page 857).

⁹² Cf. *Case of the Gómez-Paquiyaqui Brothers v. Peru*, *supra* note 6, para. 146. Cf. also *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54 para. 143; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 72, para. 79; and *Case of Ximenes-Lopes v. Brazil*, *supra* note 13, para. 148.

⁹³ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54 para. 143; *Case of Ximenes-Lopes v. Brazil*, *supra* note 13, para. 148; and *Case of Baldeón-García v. Peru*, *supra* note 6 para.94

⁹⁴ Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 54 para. 120; *Case of "the Mapiripán Massacre" v. Colombia*, *supra* note 54, para. 232; and *Case of Huilca-Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, para. 66.

⁹⁵ Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, para. 177; and *Case of Baldeón-García v. Peru*, *supra* note 6, para 93.

⁹⁶ Cf. *Case of Velásquez-Rodríguez v. Honduras*, *supra* note 54, para. 177. Cf. also *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 255; *Case of Ximenes-Lopes v. Brazil*, *supra* note 13, para. 148 and *Case of the Ituango Massacres v. Colombia*, *supra* note 71, para. 296.

⁹⁷ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para 146; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 382; *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 101.

there is nothing to show that the persons, against whom the CVR recommended bringing criminal charges, have been investigated or have been requested to make any statement in relation to the criminal investigation into the death of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.⁹⁸

135. The Court observes that, for more than 18 years, the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz have been unable to obtain judicial determination of the facts and those responsible. The domestic investigation has not guaranteed real access to justice for the next of kin of the victims, within a reasonable time; this entails the elucidation of the facts that led to the execution of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz and, if applicable, the punishment of those responsible, and the reparation of the violations. This constitutes a violation of their right to judicial protection and judicial guarantees in the terms of Articles 8 and 25 of the American Convention, in relation to Articles 4, 5 7 and 1(1) thereof. These omissions have also signified non-compliance with the obligation to guarantee the rights established in Articles 4, 5 and 7 of the American Convention in relation to Article 1(1) thereof.

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136. In addition to the above, the Commission alleged a violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture as of March 28, 1991 (the date on which the Peruvian State became a party to the Convention), owing to the failure to investigate the facts relating to torture. Regarding Article 8, the Commission stated that the Convention against Torture embodies the obligation of the State to proceed immediately to conduct an investigation and that, in this case, the State cannot defend itself by alleging the absence of evidence. Furthermore, the Commission argued that the State also violated Article 6 of the Convention against Torture because it did not investigate and did not adopt effective measures to avoid the recurrence of acts of this nature.

137. The representatives allege that the evaluations by the Institute of Legal Medicine and the Peruvian Forensic Anthropology Team show that the alleged victims were tortured before being executed. They state that Peru failed to comply with its obligation to respect Articles 1, 6 and 8 of the Convention against Torture as of April 28, 1991, owing to the absence of an investigation and the punishment of those responsible.

138. The State claimed, as a preliminary objection, that the said treaty was not applicable in the instant case, but this has been rejected (*supra* paras. 16 to 19).

139. The Court considers it necessary to emphasize that even though the Convention against Torture was not in force in Peru when Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz were murdered, the State was obliged to respect the physical and moral integrity of all persons and to ensure that “no one was subjected to torture or cruel, inhuman or degrading treatment or punishment,” as established in Article 5(1) and 5(2) of the American Convention. With the entry into force of the Convention against Torture, as of April 28, 1991, the obligations concerning humane treatment derived from the American Convention to which the State was already subject were defined and specified, as regards,

⁹⁸ Cf. Appendix concerning the Rodrigo Franco Commando of the Report of the Truth and Reconciliation Commission (file of preliminary exception, merits, reparations and costs, page 815), and Report No. 05-2005-2° FPSP-MP-FN issued by the Regular Provincial Prosecutor of the Second Supraprovincial Criminal Prosecutors Office on December 2, 2005 (file of appendixes to the brief answering the application, appendix 6, pages 928). None of the four people mentioned in the Final Report of the CVR appear on the list of persons called to make a statement by the Regular Provincial Prosecutor of the Second Prosecutor's Office.

among other matters, the prevention and investigation of acts that violate physical integrity.

140. In the instant case, the Court has declared that, owing to the failure to investigate and punish the facts that violated the personal integrity of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, there has been a violation of the rights established in Articles 8 and 25 of the American Convention, in relation, among others, to Article 5 thereof, read in conjunction with Article 1(1) of the Convention, to the detriment of their next of kin. Furthermore, bearing in mind that the obligation to guarantee the right embodied in Article 5(1) of the Convention imposes on the State the obligation to investigate possible acts of torture and other cruel inhuman or degrading treatment,⁹⁹ the Court has declared the violation, among others, of the right established in Article 5, in relation to Article 1(1) of the American Convention. Based on the foregoing, the Court does not find it necessary to make an additional ruling on whether the same facts could constitute non-compliance with the Inter-American Convention to Prevent and Punish Torture.

X
VIOLATION OF ARTICLE 16 (FREEDOM OF ASSOCIATION)¹⁰⁰
IN RELATION TO ARTICLE 1(1) OF THE AMERICAN CONVENTION

141. The Commission stated that “the union activities that Saul Cantoral-Huamaní and Consuelo Trinidad Gracia-Santa Cruz carried out in a legal, peaceful and committed manner resulted in their extrajudicial execution and violated their right to freedom of association as well as that of the working sector or collectivity of Peru.” The representatives were in substantial agreement with the Commission and, regarding Consuelo Trinidad Gracia-Santa Cruz, indicated that, owing to her work in favor of the wives of the mining workers, she had been “involved in the work of the mineworkers federation, so that her death was not a chance occurrence, but was linked to her work through her association.” The State indicated that the facts mentioned and “the limited investigations” did not allow the Commission’s allegations to be “confirmed or refuted.” The State also indicated that the evidence submitted was “stronger in relation to Mr. [...] Cantoral-Huamaní than in the case of Consuelo Trinidad Santa Cruz.”

142. As mentioned above (*supra* paras. 51, 54 to 66), Saul Cantoral-Huamaní was an important mining leader. As a trade union leader, he promoted and led the national mining strikes at the time of the facts. Owing to his leading role in relation to the miners’ demands, he was kidnapped and subjected to constant threats. This harassment occurred in a context of trade union violence.

143. Consuelo Trinidad García-Santa Cruz was a founding member of the “Filomena Tomaira Pacsi” Women’s Center, an association created in 1985, devoted to providing training and advisory services to the wives’ committees in the country’s mining camps, and to taking care of the needs of the mining families. The exercise of the right to freedom of

⁹⁹ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 88; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 344; and *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 78.

¹⁰⁰ Article 16 of the Convention stipulates:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

association by Consuelo García-Santa Cruz was directly related to the trade union demands of the miners and the dissemination of the rights of women miners.¹⁰¹ As a member of the said Women's Center, she took part in the national mining strikes in 1988. Among other activities, the Center organized literacy courses for the mining women and children; supported community kitchens for the mining families; and promoted health care activities for them.¹⁰²

144. Article 16(1) of the Convention establishes that those who are subject to the jurisdiction of the States Parties have the right to associate freely with other persons, without the intervention of the public authorities limiting or obstructing the exercise of this right. In addition, they have the right and the freedom to associate in order to seek together a lawful purpose, without pressure or interference that can alter or denature this purpose.¹⁰³ In addition to these negative obligations, freedom of association also gives rise to positive obligations, such as to prevent attacks on it, to protect those who exercise it, and to investigate violations. These positive obligations must be adopted, even in the sphere of relations between individuals, if the case merits it.¹⁰⁴ As it has determined in other cases, the Court considers that the sphere of protection of Article 16(1) includes the exercise of the right to organize trade unions.¹⁰⁵

145. The ILO Committee on Freedom of Association has stated that some trade union rights cannot be exercised when impunity exists in situations of trade union violence characterized, *inter alia*, by extrajudicial executions.¹⁰⁶

146. The State must guarantee that people can freely exercise their freedom of association without fear that they will be subjected to any violence; otherwise, the ability of groups to organize themselves to protect their interests could be reduced.¹⁰⁷ It is worth noting that when examining a complaint against Peru (*supra* para. 57), which included the report on the execution of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, the ILO Committee on Freedom of Association considered that an environment of violence constituted a grave obstacle for the exercise of freedom of association.¹⁰⁸ Freedom of association can only be exercised in a situation in which the fundamental human rights are fully respected and guaranteed, in particular the right to life and safety.¹⁰⁹ The Court underscores the State's obligation to investigate crimes against union leaders effectively and with due diligence, bearing in mind that the failure to investigate such facts has an

¹⁰¹ Cf. testimony given by Rosa Amelia García-Santa Cruz widow of Valverde during the public hearing held before the Inter-American Court on January 23 and 24, 2007; newspaper article entitled "*Fuerza and ternura*" published in the magazine "Sí" of the week of February 20 to 27, 1989 (file of preliminary exception, merits, reparations and costs, page 922); newspaper article entitled "*Testigo puede identificar a los asesinos*" published in the newspaper, "*Diario La República*" on February 15, 1989 (file of appendixes to the application, appendix 1(1), page 138).

¹⁰² Cf. testimony given by Rosa Amelia García-Santa Cruz widow of Valverde during the public hearing held before the Inter-American Court on January 23 and 24, 2007; newspaper article entitled "*2,000 policías a la caza de los asesinos*" published in the newspaper, "*Diario La República*" on February 15, 1989 (file of appendixes to the application, appendix 1(1), page 140); newspaper article entitled "*Consuelo García fue asesinada*" published in "*Doble Jornada*" on March 6, 1989 (file of appendixes to the application, appendix 1(1), page 201).

¹⁰³ Cf. *Case of Baena-Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C. No. 72, para. 156. Cf. also *Case of Huilca-Tecse v. Peru*, *supra* note 94, para. 69.

¹⁰⁴ Cf. *Case of Huilca-Tecse v. Peru*, *supra* note 94, para. 76.

¹⁰⁵ Cf. *Case of Huilca-Tecse v. Peru*, *supra* note 94, para. 77.

¹⁰⁶ Cf. Report of the Committee on Freedom of Association of the International Labour Organization, No. 337 with regard to Colombia, *supra* para. 48, paras. 535 and 539.

¹⁰⁷ Cf. *Case of Huilca-Tecse v. Peru*, *supra* note 94, para. 77.

¹⁰⁸ Cf. Report of the Committee on Freedom of Association of the International Labour Organization, No. 278 with regard to Perú, *supra* para. 48, para. 237.

¹⁰⁹ Cf. *Case of Huilca-Tecse v. Peru*, *supra* note 94, para. 75.

intimidating effect, which prevents the free exercise of trade union rights. The said due diligence is accentuated in contexts of violence against the trade union sector.

147. Based on the facts acknowledged and proven in the instant case, the Court finds that the legitimate exercise of the right to freedom of association in relation to trade unions by Saúl Cantoral-Huamaní was the motive for the attacks on his personal integrity and life (*supra* paras. 60 to 67), which, in turn, gave rise to a violation of Article 16 of the American Convention. With regard to the social leader, Consuelo García-Santa Cruz, the Court observes that her activities designed to promote the “mining wives’ committees” were directly connected to the mining strikes. In particular, during the two strikes, Consuelo García was providing support to the mining women and families who were on strike (*supra* paras. 52 and 143).

148. The Court also finds that the execution of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz had an intimidating effect on the workers of the Peruvian mining trade union movement. In a context such as that of the instant case, executions like these not only restricted the freedom of association of an individual, but also the right and the freedom of a specific group to associate freely without fear; in other words, the freedom of the mining workers to exercise this right was affected.¹¹⁰ In addition, this intimidating effect was accentuated and made more severe by the context of impunity that surrounds the case.

149. Consequently, the Court considers that the State is responsible for the violation of the right to freedom of association established in Article 16 of the American Convention in relation to non-compliance with the obligation established in Article 1(1) thereof, to the detriment of Saúl Cantoral Huamaní and Consuelo García-Santa Cruz.

XI REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)¹¹¹

150. The Commission requested the Court to order measures of reparation and also measures of satisfaction and guarantees of non-repetition. Regarding the former, it asked the Court for measures of compensation to make adequate reparation to the victims and their next of kin in relation to both the pecuniary and the non pecuniary aspects of the violations of their rights. In the case of the latter, it asked the Court to order the State to conduct a complete, impartial, effective and immediate investigation into the facts in order to establish responsibility for the unlawful and arbitrary deprivation of liberty, torture, and extrajudicial execution of the victims; to conduct a complete, impartial and effective investigation of the persons who intervened in the failed investigations; and also to take the necessary measures of prevention to avoid a recurrence of facts such as those in this case, as well as those necessary to preserve the memory of the victims, as leaders and activists of the workers trade union movement in Peru. The Commission also asked that the Court

¹¹⁰ Cf. Testimony given by Ulises Cantoral-Huamaní at the public hearing held before the Inter-American Court on January 23 and 24, 2007, in which he referred to “[t]he death of [his] brother had a tremendous impact on the mineworkers. [He] had never seen such solidarity with the family; it arrived in Lima from all the mining centers; also the mobilization for his funeral, where the miners appeared to have lost a loved one. Then this Federation started breaking apart until, finally, it was totally undermined.”

¹¹¹ Article 63(1) of the Convention establishes that:

“If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

order the State to pay the legal expenses and costs incurred by the next of kin of the victims in processing the case at both the national level and at the level of the inter-American system.

151. As a result of the State's acknowledgement of international responsibility, the representatives requested the Court to establish that the State had the obligation to make integral and proportionate reparation for the damage caused to Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz and to their next of kin. They asked the Court to order the adoption of two types of measures of reparation. First, they requested measures of compensation in favor of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, and in favor of their next of kin. Regarding the former, the representatives stated that they should be considered eligible for reparations for pecuniary and non pecuniary damage for the violation of the rights embodied in Articles 7, 5(1), 4, 8(1), 25 and 16 of the American Convention. Regarding pecuniary damage, the representatives requested reparations for loss of earnings and indirect damage. Regarding the next of kin, the representatives considered that they should be found eligible for reparations for pecuniary and non pecuniary damage for the violation of the rights embodied in Articles 5(1), 8(1) and 25 of the Convention. Regarding the measures of pecuniary compensation, the representatives maintained that the State "has lost the right to establish unilaterally in its domestic sphere the reparations in favor of the victims, owing to the international responsibility it has incurred," and rejected any restriction that the State might try to impose in the domestic sphere since this would not respect the standards established by the Court. In particular, they asked for the reimbursement of the "expenses related to the necessary measures for carrying out the burial rites" as well as expenses "arising from the long days spent visiting State institutions in order to promote an effective investigation into the facts." In addition, they asked the Court to order the State to take measures to guarantee to the victims' next of kin "the necessary medical care so that, insofar as possible they can recover their health, and to provide them with the medication that their treatment requires for as long as necessary." Finally, the representatives stated that the life project of the direct victims and their next of kin had been damaged, and asked the Court to order the State to award "grants for the education of Saúl Cantoral's children, and for professional training for his brother, Ulises Cantoral, and wife, Pelagia Mélida."

152. Regarding the measures of satisfaction and of non-repetition, the representatives asked that "a complete, impartial, effective and prompt investigation of the facts be conducted in order to identify and punish the masterminds and perpetrators of the kidnapping, torture and execution of the victims; of the persons involved in the improper interventions of the different State organs in the investigations." In addition, they requested that the judgment of the Court be published in the official gazette and in a national newspaper, and that the State apologize publicly to the next of kin of the victims in a ceremony with the "participation of the most senior State authorities and the community of mineworkers and women's organizations of Peru" and with the most extensive dissemination possible in the media. Lastly, the representatives requested payment of the expenses and costs resulting from processing the case at the national level and within the sphere of the inter-American system.

153. In their final arguments, the representatives indicated that "given the social importance of the victims," they considered it pertinent to request "measures with a collective impact," in particular, the creation of a State center for the training and protection of women, in consultation with the victims' next of kin." Also, in their final arguments, the representatives requested that the sum of US\$7,500 (seven thousand five hundred United States dollars) confiscated from the belongings of Saúl Cantoral-Huamaní be restored to the Mining Federation of which he was the Secretary General.

154. Among other matters, the State requested the Court to clarify whether the damage to health referred to by the representatives “in this case, is a damage that can be compensated and that differs from non pecuniary damage.” It also responded to the request for reparation of the damage to the life project referred to by the representatives, considering that “this only has meaning in a case other than that of the death of the victim” and that, in relation to the next of kin of the victims, “introducing the existence of a life project belonging to the family alters the idea behind this concept, and this attitude contributes [...] to causing legal uncertainty.” The State considered that the Court “can reverse the actual trend in case law by stating *a priori* that [damage to a life project] ‘cannot be given a monetary value,’” and indicated that “a monetary value can however be placed on some disruptions, which can be repaired [...].”

155. The State also asked the Court to take into account the documentary evidence authenticating the pre-existence and relationship of the next of kin with the victims, and also, in some cases, proof of close affective ties. In addition, it indicated that “regarding the monetary reparations resulting from the determination of the responsibilities of the Peruvian State, it proposes that the amounts be established according to the policies that the State is already implementing or is about to implement by law and/or administratively.” In this regard, the State drew attention to the creation of the High Level Multisectoral Commission responsible for “peace, collective reparation, and national reconciliation policies” (CMAN), as well as the adoption of the Integral Reparations Program (PIR) Act, and asked the Court to “apply the standards adopted by Peru’s national laws.” With regard to the measures to avoid a repetition of the facts, the State offered “to continue with an exhaustive investigation by the competent organs that encompasses all those responsible for the facts and makes it possible to apply the corresponding criminal sanctions to them.” In addition, the State agreed to publish the judgment in a national newspaper and indicated that it had adopted various domestic measures, including those “relating to human rights education.”¹¹²

156. The Court finds it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately.¹¹³ The Court bases its decisions regarding reparations on Article 63(1) of the American Convention.¹¹⁴

157. Considering the partial acquiescence to the facts made by the State (*supra* paras. 22 and 23), the facts that the Court has declared proven in this case according to the findings on merits outlined above, and the violations of the Convention declared in the preceding chapters, and in light of the criteria established in the case law of the Court concerning the

¹¹² In this regard, the State cited Act No. 27741, which “establishes the educational policy in relation to human rights and international humanitarian law and that their permanent and systematized teaching and dissemination is obligatory”; General Education Act No. 28044, which “incorporates the draft educational reforms proposed by the CVR”; the adoption by ministerial resolution of the “Human Rights Manual applied to the functions of the Police”; Act No. 27775, which “regulates the procedure for execution of judgments delivered by Supra-national Courts”; Article 151 of the Basic Law of the Judiciary which “obliges the Ministry of Foreign Affairs to forward to the Supreme Court of Justice the judgment delivered” by the Inter-American Court, which, in turn, “forwards it, for execution, to the court that originated the litigation”; and the series of judgments of the Constitutional Court in which the latter “decided that the judgments of the Inter-American Court of Human Rights form part of domestic law.”

¹¹³ *Cf. Case of Velásquez-Rodríguez v. Honduras*. Compensatory damages. (Art. 63(1) American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25. *Cf. also, Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 226; *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 128; *Case of La Cantuta v. Peru*, *supra* note 8, para. 199.

¹¹⁴ *Cf. Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 226; *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 128; and *Case of La Cantuta v. Peru*, *supra* note 8, para. 199.

nature and scope of the obligation to repair,¹¹⁵ the Court will proceed to determine who will be considered an injured party in this case and to examine the claims submitted by the parties, so as to order the pertinent measures of reparation.

A) *Injured parties*

158. The Court will now proceed to determine who should be considered an “injured party” in the terms of Article 63(1) of the American Convention and who will be the beneficiaries of the reparations ordered in the terms indicated above.

159. First, the Court considers that Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz are “injured parties” as victims of the violation of Articles 4, 5, 7 and 16 of the American Convention, in relation to Article 1(1) thereof, as proved in the preceding paragraphs (*supra* paras. 106 and 149).

160. Second, the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, who were declared victims of the violation of the rights embodied in Articles 5(1), 8(1) and 25 of the American Convention, in relation to el Article 1(1) thereof (*supra* paras. 120 and 135), are “injured parties.” In the case of Saúl Cantoral-Huamaní, these next of kin are: Pelagia Mélida Contreras-Montoya de Cantoral (wife); Elisa Huamaní-Infazón and Patrocinio Cantoral-Contreras (parents, both deceased); Marco Antonio Cantoral-Lozano, Vanessa Cantoral-Contreras, Brenda Cantoral-Contreras and Rony Cantoral-Contreras (children); Juan Cantoral-Huamaní, Ulises Cantoral-Huamaní, Eloy Cantoral-Huamaní, Gertrudis Victoria Cantoral-Huamaní and Angélica Cantoral-Huamaní (siblings). In the case of Consuelo García-Santa Cruz, these next of kin are: Amelia Beatriz Santa Cruz-Portocarrero and Alfonso García-Rada (mother and father, the latter deceased); Rosa Amelia García-Santa Cruz, Manuel Fernando García-Santa Cruz, María Elena García-Santa Cruz, Walter Ernesto García-Santa Cruz, Mercedes Grimaneza García-Santa Cruz and Jesús Enrique García-Santa Cruz (siblings).

161. Regarding the distribution of the corresponding compensation for pecuniary and non pecuniary damages among these next of kin of the deceased victims, the Court, in keeping with criteria used in various cases,¹¹⁶ determines that this will be made as follows:

(a) Fifty per cent (50%) of the compensation shall be shared in equal parts among the son and daughters of the victims;

(b) Fifty per cent (50%) of the compensation shall be awarded to the person who was the spouse or permanent companion of the victim at the time of the latter's death;

(c) If the victim has no children, spouse or permanent companion, fifty per cent (50%) of the compensation shall be awarded to the parents and shall be divided equally between them. If one parent is deceased, the part that corresponded to him/her will be added to the part of the surviving parent. The remaining fifty per cent (50%) shall be shared in equal parts between the victim's siblings; and

(d) If there are no next of kin in any of the categories defined in the preceding subparagraphs the amount that would have corresponded to the next of kin in that

¹¹⁵ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 129; *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 228; and *Case of La Cantuta v. Peru*, *supra* note 8, para. 203.

¹¹⁶ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 237; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 421; and *Case of Goiburú et al. v. Paraguay*, *supra* note 72, para. 148.

category or those categories will be added proportionately to the part corresponding to the other(s).

162. In the case of the next of kin of the victims who are eligible for the compensation established in this judgment, and who have died or who die before they receive their respective compensation, it shall be delivered to their successors, according to the applicable domestic law.

B) Compensation

163. The Court will proceed to determine the pertinence of granting pecuniary reparations and, if applicable, the amounts.

164. However, before doing so, the Court takes note of the State's observations in the brief answering the application to the effect that "regarding the pecuniary reparations resulting from the determination of the responsibilities of the Peruvian State, it proposes that the amounts be established according to the policies that the State is already implementing or is about to implement by law and/or administratively," and that the "State will apply Act No. 28,592 to the next of kin of the ten [*sic*] persons affected; this Act creates the Integral Reparation Program(PIR), and the regulations in force. It does not consider that it should accept any additional amount as financial compensation." These arguments, drafted in various different ways, are retained in its final arguments.

165. First, the Court wishes to recall that all aspects of the obligation to repair are regulated by international law.¹¹⁷ Also, the Court appreciates the State's intention of implementing policies on reparation under domestic law through an integral program, enacted as a law. However, as it has previously, the Court notes that in this case there is no evidence or any probative element that Act No. 28,592 creating the Integral Reparation Program (PIR) has been applied in this case. Consequently, the Court will not examine this argument or analyze the scope of this law.¹¹⁸

B(1) Pecuniary damage

166. The Court recalls that pecuniary damage supposes the loss of the income that the deceased victim would have perceived during his probable lifetime, the expenses incurred owing to the facts, and the consequences of a pecuniary nature that have a direct causal connection with the facts of the case.¹¹⁹

167. Regarding the loss of income of Saúl Cantoral-Huamaní, in their brief with requests, arguments and evidence, the representatives provide a calculation, taking into account different elements such as his age, life expectancy in his specific case, his monthly remuneration as "a welder (level A) of Hierro Peru" and other monetary benefits, and the retirement age in the mining sector. In relation to the loss of income of Consuelo García-Santa Cruz, the representatives make a calculation based on similar criteria: age, life

¹¹⁷ Cf. *Case of Velásquez-Rodríguez v. Honduras. Compensatory damages* (Art. 63(1) American Convention on Human Rights), *supra* note 114, para. 30; and *Case of Aloeboetoe et al. v. Suriname. Reparations* (Art 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 44. Cf. also *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 226; *Case of La Cantuta v. Peru*, *supra* note 8, para. 200; and *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 415.

¹¹⁸ Cf. *Case of La Cantuta v. Peru*, *supra* note 8, para. 212.

¹¹⁹ Cf. *Case of Bámaca-Velásquez v. Guatemala. Reparations* ((Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 43. Cf. also *Case of La Cantuta v. Peru*, *supra* note 8, para. 213; *Case of Goiburú et al. v. Paraguay*, *supra* note 72, para. 150; and *Case of Montero Aranguren et al. (Catia Detention Center)*, *supra* note 72, para. 126.

expectancy, remuneration and work benefits received as an employee of the "Filomena Tomaira Pacsi" Association.

167. The representatives alleged that, at the time of the facts, Saúl Cantoral was 42 years of age and that the life expectancy in Peru was 43.9 years. However, they consider that this statistical projection should not be applied because the victim could have outlived this projection by many years, taking into account the ages of his elder siblings, Juan and Ulises, who were 66 and 62 years old when the brief with requests, arguments and evidence was submitted. Based on this argument, the representatives made a calculation for the period from February 1989 to February 2006, arriving at a total of 73,781.98 new soles (US\$22,563.30, twenty-two thousand five hundred and sixty-three United States dollars and thirty cents). They added 25% to the legal minimum income, corresponding to the minimum mining income (Supreme Decree No. 030-89-TR of August 2, 1989), to this calculation. The representatives also applied the labor laws on the retirement of mineworkers, according to which they have the right to receive a pension when they are between 50 and 55 years of age, and this pension is equal to 100% of their income or referential remuneration, without exceeding the maximum pension amount established in Decree Law 19,990 (Act 25,009 of January 25, 1989, articles 1 and 9).

169. With respect to, Consuelo García-Santa Cruz, the representatives allege that, at the time of the facts, she was 33 years old and had a life expectancy of 55.5 years. Using the same criteria, the representatives calculated that this statistical projection should not be used, since the victim could have outlived it by many years, taking into account the ages of her older siblings, Rosa Amelia and Manuel Fernando, who were 54 and 53 years of age when the brief with requests, arguments and evidence was submitted to the Court. Based on this argument, the representatives made a calculation for the period from February 1989 to February 2006, arriving at a total of 59,025.68 new soles (US\$18,050.66, eighteen thousand and fifty United States dollars and sixty-six cents).

170. The State did not dispute this argument of the representatives, nor did it question the accuracy of the amounts they mention.

171. Based on criteria of equity, the Court considers it admissible to order the State to pay the sum of US\$22,500.00 (twenty-two thousand five hundred United States dollars) for loss of income in relation to Mr. Cantoral-Huamaní and US\$18,000.00 (eighteen thousand United States dollars) in relation to Mrs. García-Santa Cruz for the same concept.

172. The compensation established in the preceding paragraph shall be distributed among the next of kin of the deceased victims in keeping with the provisions of paragraph 161 of this judgment. The State shall make these payments within one year of notification of the judgment.

173. In relation to the expenses "caused by the long days spent visiting State institutions in order to promote an effective investigation into the facts," requested by the representatives the Court observes that no probative elements have been provided in this respect. Notwithstanding this, the Court will rule in this regard when considering the procedural costs and expenses, and will also take into consideration the damage resulting from the failure to investigate, when determining the reparations for non pecuniary damages for the next of kin owing to the violations of articles 5, 8 and 25 of the American Convention.

174. Likewise, vouchers were not submitted in the case of the funeral expenses. The Court presumes, as it has in previous cases, that the next of kin incurred various expenses

as a result of the death of their family member.¹²⁰ The Court observes that in the case of Saúl Cantoral-Huamaní, the Mineworkers Union of Hierro Peru took charge “of many of the burial expenses.”¹²¹ The Court recalls that, when a violation of the American Convention occurs, the obligation to repair it arises and is the exclusive responsibility of the State. Consequently, taking into account the circumstances of this case and the Court’s previous rulings, the Court finds it pertinent to establish in equity the amount of US\$1,000.00 (one thousand United States dollars), as compensation for the funeral expenses for each of the deceased victims. In keeping with the representatives’ request, these amounts shall be delivered to the wife of Saúl Cantoral-Huamaní and to the mother of Consuelo García-Santa Cruz. The State must make these payments within one year of notification of this judgment.

B.2) Non pecuniary damage

175. The Court must now determine the reparations for non pecuniary damage, as it has understood this in its case law. The Court recalls that non pecuniary damage can include the suffering and hardship caused to the direct victim and his next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to allocate a precise monetary equivalent for non pecuniary damage, it can only be compensated, in order to provide comprehensive reparation to the victims, by the payment of a sum of money or the delivery of goods or services with a monetary value, which the Court determines by the reasonable exercise of judicial discretion and based on the principle of equity; and also by acts or projects with public recognition or repercussion, which have the effect of acknowledging the dignity of the victims, and avoiding the repetition of the human rights violations.¹²²

176. Based on the criteria established in other cases,¹²³ the Court considers that the non pecuniary damage inflicted on Mr. Cantoral-Huamaní and Ms. García-Santa Cruz is evident, because it is inherent in human nature that all those subjected to illegal and arbitrary detention, acts violating personal integrity and subsequent extrajudicial execution, such as described in this case, experience intense suffering, anguish, terror, and feelings of powerlessness and insecurity; hence, this damage does not require proof.

177. Considering the circumstances of the case and its decisions in similar cases, the Court considers it appropriate to establish in equity the sum of US\$50,000.00 (fifty thousand United States dollars), for each of the deceased victims as compensation for the non pecuniary damage that the human rights violations declared in this judgment caused to Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz.

178. With regard to specific next of kin of the deceased victims, it has been established that they have been victims of the violation of Articles 5, 8 and 25 of the Convention in the terms of paragraphs 112 to 120 and 135 of this judgment.

179. In accordance with the Court’s finding in this case, the violation of the rights to life, personal liberty and personal integrity of Saúl Cantoral-Huamaní and Consuelo García-Santa

¹²⁰ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 251; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 428; and *Case of Servellón-García et al. v. Honduras*, *supra* note 13, para. 177

¹²¹ Cf. sworn statement made by Vanessa Cantoral-Contreras (file of preliminary exception, merits, reparations and costs, page 389).

¹²² Cf. *Case of the “Juvenile Reeducation Institute” v. Paraguay*. Judgment of September 2, 2004. Series C No. 112, para. 295. Cf. also *Case of La Cantuta v. Peru*, *supra* note 8, para. 216; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 430; and *Case of Vargas-Areco v. Paraguay*, *supra* note 13, para. 149.

¹²³ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 256; *Case of La Cantuta v. Peru*, *supra* note 8, para. 217; and *Case of Goiburú et al. v. Paraguay*, *supra* note 72, para. 157.

Cruz had a profound impact on their next of kin, both as regards affective, financial and work-related aspects (*supra* paras. 113 to 199), and in relation to their physical and mental health (*infra* paras. 195 to 202).

180. International case law has established repeatedly that the judgment constitutes *per se* a form of reparation.¹²⁴ Nevertheless, owing to the circumstances of this case, the sufferings that the violations committed caused to the victims and their next of kin, the alterations in the living conditions of both families, and the other consequences of a non pecuniary nature, the Court finds it appropriate to order the payment of the following amounts as compensation for the non pecuniary damage suffered, based on the equity principle.¹²⁵

- i) US\$25,000.00 (twenty-five thousand United States dollars) for Pelagia Mélida Contreras-Montoya;
- ii) US\$20,000.00 (twenty thousand United States dollars) for the mother, father and each child of Saúl Cantoral-Huamaní;
- iii) US\$20,000.00 (twenty thousand United States dollars) for the mother and father of Consuelo García-Santa Cruz; and

US\$5,000.00 (five thousand United States dollars) for each sister or brother mentioned in paragraph 160 of this judgment.

181. In the case of Pelagia Mélida Contreras-Montoya and Ulises Cantoral-Huamaní, wife and brother of Saúl Cantoral-Huamaní, the damage caused by the violations that have been proved was more intense. Pelagia Mélida Contreras-Montoya, together with Ulises Cantoral-Huamaní, tirelessly took charge of monitoring the internal investigations into the death of their husband and brother, and also gave testimony before the Truth and Reconciliation Commission. Without detriment to the efforts of other members of his family, Ulises Cantoral-Huamaní assumed a leading role in monitoring the investigations initiated at the domestic level during the 18 years that have elapsed. The Court notes that because he assumed the role of monitoring the investigations, Ulises Cantoral-Huamaní also had to distance himself from his family.¹²⁶

182. Also, as the Court has noted (*supra* para. 115), Gertrudis Victoria Cantoral-Huamaní, who was pregnant at the time of the facts, was attacked in her home by strangers who broke into her home and threatened her in related to the investigations that her brother Ulises Cantoral-Huamaní was conducting.¹²⁷ Regarding Eloy Cantoral-Huamaní, the Court observes that at the time of Saúl Cantoral-Huamaní's death, he was studying outside of the country and that, when he returned to Peru because of the death of his mother, an attempt was made to kidnap him. The Court further observes that this family member was the

¹²⁴ Cf. *Case of Suárez-Rosero v. Ecuador. Reparations* (Art 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 72. Cf. also *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 203; *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 264; and *Case of La Cantuta v. Peru*, *supra* note 8, para. 219.

¹²⁵ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, paras. 204 and 205; *Case of La Cantuta v. Peru*, *supra* note 8, para. 219; *Case of Goiburú et al.*, *supra* note 72 para. 160.

¹²⁶ Cf. sworn statement made by Vanessa Cantoral-Contreras (file of preliminary exception, merits, reparations and costs, pages 384 and 385).

¹²⁷ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 434).

victim of a break-in at his home and that Ulises Cantoral-Huamaní stated that, on that occasion, his brother's case file was stolen.¹²⁸

183. The Court recognizes these circumstances and establishes for each of the persons mentioned in paragraphs 181 and 182 an additional amount of US\$5,000 (five thousand United States dollars).

184. The State must pay the compensation for non pecuniary damage within one year of notification of this judgment.

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185. In keeping with the previous paragraphs, the compensation payments established by the Court are as follows:

| <i>Beneficiaries</i> | <i>Amount</i> |
|---|----------------|
| Saúl Isaac Cantoral-Huamaní | US\$ 72,500.00 |
| Consuelo Trinidad García-Santa Cruz | US\$ 68,000.00 |
| <i>Next of kin of Saúl Cantoral-Huamaní</i> | |
| Pelagia Mélida Contreras-Montoya de Cantoral (wife) | US\$ 31,000.00 |
| Elisa Huamaní-Infanzón (mother, deceased) | US\$ 20,000.00 |
| Patrocinio Cantoral-Contreras (father, deceased) | US\$ 20,000.00 |
| Marco Antonio Cantoral-Lozano (son) | US\$ 20,000.00 |
| Vanessa Cantoral-Contreras (daughter) | US\$ 20,000.00 |
| Brenda Cantoral-Contreras (daughter) | US\$ 20,000.00 |
| Rony Cantoral-Contreras (son) | US\$ 20,000.00 |
| Juan Cantoral-Huamaní (brother) | US\$ 5,000.00 |
| Ulises Cantoral-Huamaní (brother) | US\$10,000.00 |
| Eloy Cantoral-Huamaní (brother) | US\$ 10,000.00 |
| Gertrudis Victoria Cantoral-Huamaní (sister) | US\$ 10,000.00 |
| Angélica Cantoral-Huamaní (sister) | US\$ 5,000.00 |
| <i>Next of kin of Consuelo García-Santa Cruz</i> | |
| Amelia Beatriz Santa Cruz-Portocarrero (mother) | US\$ 21,000.00 |
| Alfonso García-Rada (father, deceased) | US\$ 20,000.00 |
| Rosa Amelia García-Santa Cruz (sister) | US\$ 5,000.00 |
| Manuel Fernando García-Santa Cruz (brother) | US\$ 5,000.00 |
| María Elena García-Santa Cruz (sister) | US\$ 5,000.00 |
| Walter Ernesto García-Santa Cruz (brother) | US\$ 5,000.00 |
| Mercedes Grimaneza García-Santa Cruz (sister) | US\$ 5,000.00 |
| Jesús Enrique García-Santa Cruz (brother) | US\$ 5,000.00 |

186. The State must pay the compensation for non pecuniary damage directly to the beneficiaries within one year from notification of this judgment.

C) Measure of restitution

187. Finally, regarding the sum of US\$7,500.00 (seven thousand five hundred United States dollars) delivered by the Mining Federation to Saúl Cantoral-Huamaní, which moments before his death, he left in the hotel where he was staying, and which was seized and judicially deposited by the authorities investigating the case; the Court notes that it was never restituted, but was lost or stolen while in judicial custody. This assumption is

¹²⁸ Cf. testimony provided by Ulises Cantoral-Huamaní during the public hearing on January 23, 2007, before the Inter-American Court.

supported by the allegations of the representatives and also by the evidence presented by the State, advising that, on May 8, 1995, a prosecutor's office ordered that the case file be forwarded to the acting prosecutor because of "indications of a crime against the property (theft) of the Certificate of Judicial Deposit of the National Bank No. [...], dated April 18, 1989, for a total of US\$7,500.00." The loss of this sum of money under the State's custody has a direct causal connection to the events of this case and, consequently, must be restituted. Therefore, if this sum of money has not been already returned, the Court orders that it should be restituted to Pelagia Mélida Contreras-Montoya de Cantoral, who may dispose of it as she sees fit.

*D) Other forms of reparation
(Measures of satisfaction and guarantees of non-repetition)*

188. In this section, the Court will determine those measures of satisfaction that seek to repair non pecuniary damage, which does not have a pecuniary scope, and will also order measures of a public scope or repercussion.

i) Obligation to investigate the facts that gave rise to the violations in this case, and identify, prosecute and punish those responsible

189. In this judgment, the Court has established that, for more than 18 years, the next of kin of Saúl Cantoral-Huamani and Consuelo García-Santa Cruz have not obtained a judicial determination of the facts or of those responsible, because the investigation conducted at the domestic level has not constituted an effective recourse to guarantee true access to justice for the next of kin of the victims (*supra* para. 135).

190. The Court recalls that, when complying with its obligation to investigate and, if applicable, punish those responsible for the facts, the State must remove all the *de facto* and *de jure* obstacles, that impede the proper investigation of the events, and use all available means to expedite the investigation and the respective proceedings in order to avoid a repetition of such serious acts as those examined in the instant case. The State may not invoke any law or provision of domestic law to exempt itself from the obligation to investigate and, if applicable, punish those responsible for the acts against Saúl Cantoral-Huamani and Consuelo García-Santa Cruz. In particular, the Court recalls that the State may not apply amnesty laws, or provisions relating to prescription, or other provisions that exclude responsibility, which prevent the investigation and punishment of those responsible.

191. In addition, bearing in mind the Court's case law,¹²⁹ the State must ensure that the next of kin of the victims have full access and capacity to act at all stages and in all instances of these investigations and proceedings, pursuant to domestic law and the provisions of the American Convention. The result of the proceedings must be publicized so that Peruvian society may know the judicial determination of the facts and those responsible in this case.¹³⁰

ii) Publication of the Judgment

¹²⁹ Cf. *Case of La Cantuta v. Peru*, *supra* note 8, para. 228; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 72, para. 139; and *Case of Baldeón-García v. Peru*, *supra* note 6, para. 199.

¹³⁰ Cf. *Case of La Cantuta v. Peru*, *supra* note 8, para. 228; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 441; and *Case of Almonacid-Arellano et al. v. Chile*, *supra* note 13, para. 157.

192. As it has in other cases,¹³¹ and considering the State's acceptance in this regard (*supra* para. 31), the Court considers that, as a measure of satisfaction, the State must publish once in the Official Gazette and in another national newspaper with widespread coverage, chapters VII to X of this judgment, without the corresponding footnotes, and its operative paragraphs. These publications must be made within six months of notification of this Judgment.

iii) *Public act acknowledging international responsibility*

193. As it has in other cases,¹³² the Court considers it necessary, in order to repair the damage caused to the victims and their next of kin and to avoid a repetition of facts such as those of this case, that the State conduct a public act acknowledging its international responsibility in relation to the violations declared in this judgment, to make reparation to the victims and to provide satisfaction to their next of kin. During this act, reference must be made to the activities of Saúl Cantoral-Huamani and Consuelo García-Santa Cruz, and also to the human rights violations declared in this judgment. The act must take place in a public ceremony, in the presence of authorities representing the State and the next of kin who have been declared victims in this judgment, who must be invited by the State with due notice. The State must publicize this act in the media.¹³³ The act must be carried out within six months of notification of this Judgment.

iv) *Scholarships for Education*

194. Taking into consideration the request made by the representatives and, as the Court has ordered in other cases,¹³⁴ the State must provide a scholarship in a public Peruvian institution for the children of Saúl Cantoral-Huamani, covering all the costs of their education, from the time the beneficiaries request the State to provide it until the conclusion of their advanced technical or university studies. The State must also provide a scholarship, under the same conditions, for professional training or updating for Ulises Cantoral-Huamani and Pelagia Mélida Contreras-Montoya de Cantoral.

v) *Medical and psychological care*

195. In accordance with the statements made and the expert opinion provided in these proceedings, the facts of this case have affected physically and mentally the next of kin who have been declared victims in this judgment. In his expert psychological report, the expert witness Gushiken Miyagui referred to the need for these next of kin to receive medical and psychological treatment.¹³⁵

196. When examining the situation of Pelagia Mélida Contreras-Montoya de Cantoral, Saúl Cantoral Huamani's wife, the expert's report indicated that the efforts of Mrs. Contreras to overcome the death of her husband have been insufficient and that she had been in crisis in recent months. In this regard, the expert stated that "when Saul's death is mentioned, she

¹³¹ Cf. *Case of Bueno-Alves v. Argentina*, *supra* note 8, para. 215; *Case of La Cantuta v. Peru*, *supra* note 8, para. 237; and *Case of Goiburú et al. v. Paraguay*, *supra* note 72, para. 175.

¹³² Cf. *Case of La Cantuta v. Peru*, *supra* note 8 para. 235; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 445; and *Case of Vargas-Areco v. Paraguay*, *supra* note 6, para. 158.

¹³³ Cf. *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 445; *Case of the Girls Yean and Bosico v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 235; and *the case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, para. 226.

¹³⁴ Cf. *Case of Gómez-Palomino v. Peru*, *supra* note 65, para. 148; and *Case of the Gómez-Paquiyaauri Brothers v. Peru*, *supra* note 6, para. 237.

¹³⁵ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs pages 426 to 442).

cries, revealing a suffering that is always present.”¹³⁶ In relation to the children of Saúl Cantoral-Huamaní, the expert psychological report indicated that Marco Antonio Cantoral-Lozano is trapped in a “vicious circle” because he is unable to construct solid social and personal relationships, and this “without doubt” requires therapy.¹³⁷

197. The Court notes that, according to this expert report some of Saúl Cantoral-Huamaní’s other children suffer specific ailments that require special therapeutic treatment.¹³⁸

198. The Court also notes that, owing to the attack to which she was subjected (*supra* para. 115), Gertrudis Victoria Cantoral-Huamaní, Saúl Cantoral-Huamaní’s sister, “has suffered from “a terrible fear that prevents her from leaving her house alone”; also when “her husband or her children go out, she wants to follow them.”¹³⁹ Gertrudis Victoria has started to attend therapy. The expert psychological report suggests that support must be provided to enable her to continue this therapy until she has been able to “resolve the conflicts on which her symptoms of fear and insecurity are based.”¹⁴⁰

199. Amelia Beatriz Santa Cruz, who is 75 years old, stated that, following the death of her daughter, Consuelo García-Santa Cruz, she has had “a heart problem,” and suffers from “a number of physical ailments.”¹⁴¹ In addition, she emphasized that the death of her daughter caused psychological damage to “most of [her] children,” because they were “tremendously upset” by what was done to them.¹⁴² The expert psychological opinion stated that “Doña Amelia should receive therapy.”¹⁴³

200. In order to help repair the physical and mental damage, the Court considers it necessary to declare that the State has the obligation to provide, free of charge and immediately, through its specialized health care institutions, the medical and psychological treatment required by the next of kin who have been declared victims. The medical treatment for their physical health should be provided by personnel and institutions specializing in the care of the physical and mental health care problems of such people to ensure they are provided with the most appropriate and effective treatment. The psychological and/or psychiatric treatment should be provided by personnel and institutions specialized in caring for the victims of violent acts such as those that occurred in this case. This medical and psychological treatment must be provided for the necessary time, including the provision of the necessary medications, and should take into consideration the ailments of each of them, following an individual evaluation.¹⁴⁴

¹³⁶ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 425).

¹³⁷ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 428).

¹³⁸ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 428-432).

¹³⁹ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 435).

¹⁴⁰ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 436-437).

¹⁴¹ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 395).

¹⁴² Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 396-397).

¹⁴³ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs page 441).

¹⁴⁴ Cf. *Case of the Rochela Massacre v. Colombia*, *supra* note 8, para. 302; *Case of the Miguel Castro-Castro Prison v. Peru*, *supra* note 6, para. 449; and *Case of Vargasa-Areco v. Paraguay*, *supra* note 6, para. 160.

201. Regarding Vanessa Cantoral-Contreras and Brenda Cantoral-Contreras, the Court notes that since August 2004 and February 2006, respectively, they have been receiving psychotherapeutic treatment in the Lima Center for Psychosocial Care (CAPS),¹⁴⁵ a non-governmental organization affiliated to the Peruvian National Human Rights Coordinator, which provides psychological care to those affected by political violence. The expert psychological opinion given in the instant case stated that “it is extremely important that Vanessa continue her therapy, in this regard.”¹⁴⁶ The expert psychological opinion also indicated that “since the exhumation of her father’s body and the Court’s hearings [Vanessa Cantoral-Contreras has] once again begun to suffer from insomnia [...] she says that she does not want anything and feels lost.”¹⁴⁷

202. The Court takes into consideration the reference in the expert testimony to the importance that Brenda and Vanessa continue to receive psychological treatment. In this regard, and taking into account the particular nature of psychological care, which implies the establishment of a relationship of trust between the psychologist and the patient, the sudden rupture of which could negatively affect the treatment and the results for the patient, the Court considers that, if Vanessa and Brenda Cantoral-Contreras wish, the State must provide the continuation of their current psychological treatment in the conditions in which they are receiving it at the date of this judgment, for the necessary time. In case they wish otherwise, they should receive the same psychological treatment as that provided to the other family members, according to the provisions of paragraph 200 of this Judgment.

d) Costs and expenses

203. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention.¹⁴⁸

204. The Court takes into account that the representatives of the victims incurred expenses during the domestic and the international proceedings in this case. The representatives requested that the Court, “when taking a decision on this item, consider the costs of legal advice and the expenses related to the lawyer’s participation in the hearing [...], which included not only traveling to the seat of the Court, and the board and lodging of the lawyers [who intervened before the Court], but also the fees of [one of them].” The State indicated that “it will accept the reasonable expenses and costs that are authenticated before the Court and that are directly and necessarily related to the legal representation in the case.”

205. Even though, in this case, the representatives have not forwarded the Court any evidence to support their claims regarding costs and expenses, the Court considers, in equity, that the State should pay the sum of US\$10,000.00 (ten thousand United States

¹⁴⁵ Cf. certification of Vanessa Cantoral-Contreras’ appointments at the Center for Psycho-social Care, issued on April 17, 2006 (file of appendixes to the brief with requests and arguments, page 713); and certification of Brenda Cantoral-Contreras’ appointments at the Center for Psycho-social Care issued on April 17, 2006 (file of appendixes to the brief with requests and arguments, page 714).

¹⁴⁶ Cf. Expert psychological report provided by Roberto Alfonso Gushiken-Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, page 429).

¹⁴⁷ Cf. Expert psychological report provided by Roberto Alfonso Gushiken Miyagui on January 11, 2007 (file of preliminary exception, merits, reparations and costs, pages 429 and 430).

¹⁴⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations* (Art 63(1) American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 79; *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations* (Art 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 212. Cf. also *Case of Bueno-Alves v. Argentina, supra* note 8, para. 216; *Case of the Rochela Massacre v. Colombia, supra* note 8, para. 304; and *Case of La Cantuta v. Peru, supra* note 8, para. 243.

dollars) to Pelagia Mélida Contreras de Cantoral, who will deliver the corresponding amount to the representatives. The State shall make the payment for costs and expenses within one year of notification of this Judgment.

f) Means of compliance with the payments ordered

206. If, for reasons attributable to the beneficiaries of the compensation, it is not possible for them to receive it within the period indicated in the preceding paragraph, the State shall deposit the amounts in their favor in an account or a deposit certificate in a solvent Peruvian banking institute in United States dollars and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, it shall revert to the State with the accrued interest.

207. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in Peruvian currency, using the exchange rate between the two currencies in force on the market in New York, United States of America, the day before the payment to make the respective calculation.

208. The amounts allocated in this Judgment for compensation and for reimbursement of costs and expenses may not be affected or conditioned by current or future taxes or charges. To that end, they must be delivered to the beneficiaries integrally, as established in the judgment.

209. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Peru.

210. In accordance with its consistent practice, the Court reserves the right inherent in its attributes, and derived from Article 65 of the American Convention, to monitor compliance with all the terms of this Judgment. The case will be closed when the State has fully complied with all its terms. Within one year of notification of the Judgment, Peru shall provide the Court with a report on the measures adopted to comply with the judgment.

XII OPERATIVE PARAGRAPHS

Therefore,

THE COURT

1. Accepts the partial acknowledgement of responsibility made by the State, in the terms of paragraphs 34 to 37 of this judgment.

DECLARES,

unanimously that:

2. The State violated the right to life embodied in Article 4 of the American Convention on Human Rights, in relation to the obligation to respect and ensure those rights established in Article 1(1) thereof, to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 79 to 106 of this Judgment.

3. The State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 79 to 106 of this Judgment.

4. The State violated the right to personal liberty embodied in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 79 to 106 of this Judgment.

5. The State violated the right to freedom of association embodied in Article 16 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 147 to 149 of this Judgment.

6. The State violated the right to humane treatment embodied in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 112 to 120 of this judgment.

7. The State violated the right to a fair trial and judicial protection embodied in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Articles 4, 5, 7 and 1(1) thereof, to the detriment of the next of kin of Saúl Cantoral-Huamaní and Consuelo García-Santa Cruz, in the terms of paragraphs 124 to 135 of this judgment.

AND DECIDES,

unanimously that:

8. This Judgment constitutes *per se* a form of reparation.

9. The State shall immediately investigate the facts that generated the violations in the present case, and identify, prosecute, and sanction those responsible, in the terms of paragraphs 189 to 191 of this judgment. The results of these proceedings shall be publicized by the State, so that the Peruvian people may know the truth about the events and those responsible in this case.

10. The State shall, within six months of the notification of this Judgment, publish once, in the Official Gazette and in another national daily newspaper, chapters VII to X of this Judgment, without the corresponding footnotes, together with its operative paragraphs.

11. The State shall, within six months of the notification of this Judgment, publicly acknowledge its international responsibility for the violations declared in this Judgment, to make reparation to the victims and to provide satisfaction to their next of kin, in a widely publicized public ceremony attended by authorities representing the State, and the next of kin who have been declared victims in this Judgment, in the terms of paragraph 193 of this Judgment.

12. The State shall provide a study grant to a public institution for Ulises Cantoral-Huamaní, Pelagia Mérida Contreras-Montoya de Cantoral, and the children of Saúl Cantoral-Huamaní, that covers all their educational expenses, from the moment the beneficiaries

request this of the State until the conclusion of their advanced technical or university studies, in the terms of paragraph 194 of this Judgment.

13. The State shall provide for the continuation of the psychological treatment currently being received by Vanessa and Brenda Cantoral-Contreras for the necessary period, and provide immediate psychological treatment to the other next of kin who have been declared victims free of charge and for the necessary period, in the terms of paragraphs 195 to 202 of this Judgment.

14. The State shall pay the amounts established in this Judgment for pecuniary damages, non pecuniary damages, and reimbursement of costs and expenses within one year of notification of this judgment, to the persons indicated in paragraphs 159 and 160 and in the manner stipulated in paragraphs 161, 171, 172, 174, 177, 180 to 183, 205 and 206 to 209 hereof.

AND STIPULATES,

unanimously that:

15. It shall monitor full compliance with this Judgment and close the instant case when the State has fully complied with all its provisions. Within one year of notification of this Judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 210 of this judgment.

Judge Manuel E. Ventura Robles informed the Court of his separate opinion, which is attached to this judgment.

Done, at San José, Costa Rica, on July 10, 2007, in English and Spanish, the Spanish version being authentic.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION
CANTORAL-HUAMANÍ AND GARCÍA-SANTA CRUZ v. PERU

I have cast my vote to approve, unanimously, this Judgment in Cantoral-Huamani and García-Santa Cruz v. Perú, but I feel it necessary to clarify my position on an issue that has been considered during the deliberation of this case and in various cases before the Court over the last three years.

This is the interpretation and application of Articles 8(1) and 25 of the Convention in relation to Article 1(1) and, hence, the nature and purpose of these provisions.

Chapter I of the American Convention (General Obligations) refers to the obligations of the States Parties under this instrument: Article 1 (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects). These are provisions of a general nature that permeate all the rights protected in Chapter II (Civil and Political Rights). The latter are protected rights have their own ontological nature, they protect inherent juridical rights, which may be violated by the State Party as a result of certain acts that also entail the violation of Article 1(1) and, if applicable, Article 2, which, as I have indicated, are general provisions. This is not the nature of Articles 8 and 25, which also have a specific ontological content, but not as provisions of the Convention with general application and, consequently, they can be violated by the State, together with other rights, always in relation to Article 1(1), which establishes the general obligation of the States Parties to respect and ensure the rights included in Chapter II of the Convention.¹⁴⁹

Article 1(1) of the Convention establishes that:

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.

Article 8(1) indicates textually that:

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.

While Article 25 states that:

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.

2. The States Parties undertake:

a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

¹⁴⁹ Cf. IACHR, *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71; IACHR, *Case of Cantos v. Argentina*. Judgment of November 28, 2002. Series C No. 97; ICHR, *Case of Almonacid-Arellano et al. v. Chile*. Judgment of September 26, 2006. Series C No. 154; ICHR, *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*. Judgment of November 24, 2006. Series C No. 158.

- b) to develop the possibilities of judicial remedy; and
- c) to ensure that the competent authorities shall enforce such remedies when granted.

The Court has also decreed the violation of Article 1(1) of the Convention independently of other violations of other articles.¹⁵⁰ In addition, the violation of Articles 8(1) and 25 has been considered and declared autonomously, without considering them in relation to Article 1(1) of the Convention.¹⁵¹ In addition, the Court has applied Articles 8(1) and 25 in relation to articles of the Convention other than Article 1(1).¹⁵²

Consequently, suggesting that the Court should consider that it cannot declare the violation of Articles 8(1) and 25 independently, as an autonomous violation, but only in relation to another basic right which cannot be Article 1(1), is to affirm that the American Convention does not protect the right to justice and would be attempting to bestow on Articles 8(1) and 25 the nature of general provisions which, as in the case of Article 1(1), permeate the entire Convention, and the result of this would be to denature the very content of Articles 8(1) and 25.

To change the Court's case law on this issue, after the more than 20 years that it has been exercising its jurisdictional function, is confusing, in addition to being inappropriate and unnecessary. It introduces an element of distortion in the deliberation of future cases.

Manuel E. Ventura Robles
Judge

Pablo Saavedra Alessandri
Secretary

¹⁵⁰ Cf. IACHR, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63.

¹⁵¹ Cf. IACHR, *Case of Baena-Ricardo et al. v. Panama*. Judgment of February 2, 2001. Series C No. 72; and ICHR, *Case of Las Palmeras v. Colombia*. Judgment of December 6, 2001. Series C No. 90.

¹⁵² Cf. IACHR, *Case of Servellón-García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152; ICHR, *Case of Vargas-Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155.