

Cruz Sánchez v. Peru

ABSTRACT¹

This case is about the famous attack in 1996 by a commando of the Túpac Amaru Revolutionary Movement (MRTA) against the residence of the Japanese Ambassador in Peru and the four months ensuing siege. Eventually, Peru's armed forces stormed the Ambassador's residence, freeing most remaining hostages. However, several members of the MRTA were summarily executed before being brought to justice. Notably, albeit the relatives of the victims had not exhausted domestic remedies before proceedings were brought before the Commission, the Court decided that the Commission's decision to hear the case before domestic remedies had been exhausted was appropriate, as those remedies were futile. On the merits, Peru admitted partial responsibility and the Court found violation of some articles of the American Convention, mostly for the botched investigation of the events, but could not find evidence the members of the commando had been killed while already hors de combat. No compensation was awarded to the families of the victims.

I. FACTS

A. Chronology of Events

December 17, 1996: Mr. Morihisa Aoki, Japanese Ambassador to the State, hosts a social event at his residence.² Several high level government officials, including Congressmen and Supreme Court Justices, are in attendance.³ Fourteen heavily armed members of the Túpac Amaru Revolutionary Movement (“MRTA”), including Mr. Eduardo Nicolás Cruz Sánchez, Mr. Victor Salomón Pecaros Pedraza, and Ms. Herma Luz Meléndez Cueva (hereinafter, “alleged

1. Raymond Chavez, Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Cruz Sánchez v. Peru, Report on Merits, Report No. 66/10, Inter-Am. Comm'n H.R., Case No. 12.444, ¶50 (Mar. 31, 2011).

3. *Id.*

victims”), overpower the guards at Mr. Aoki’s residence and take the guests hostage.⁴ Peru’s President, Mr. Alberto Fujimori, holds emergency meetings with his cabinet and security officials.⁵ The MRTA and the State begin negotiations for the release of the hostages.⁶

December 17, 1996 – January 1, 1997: The MRTA releases most of the hostages to the Government, but keeps 72 captives inside Ambassador’s Aoki’s residence.⁷

March 6, 1997: Mr. Néstor Cerpa Cartolini, leader of the MRTA, ends hostage negotiations after he discovers that the State dug a tunnel beneath the Ambassador’s residence to free the remaining hostages by force.⁸

March 12, 1997: Hostage negotiations resume.⁹

March 21, 1997: Mr. Cerpa Cartolini suspends negotiations after refusing asylum in Cuba.¹⁰

April 22, 1997: After the collapse of hostage negotiations, President Fujimori orders the Commander General of the Army and other high ranking military officials to commence a hostage rescue operation prepared as a contingency plan.¹¹ The plan, codenamed “Operations Plan Nipón 96” or “*Operation Plan Chavin de Huántar*,” directs soldiers to take actions necessary to neutralize terrorist threats, but also instructs officers to “not commit excesses of any sort, maintaining absolute respect for [human rights].”¹² Approximately 143 State commandos storm the residence.¹³ Two commandos, one hostage, and all fourteen MRTA members, including the alleged victims, perish during the operation.¹⁴ A special military judge and prosecutor arrive at the Japanese Ambassador’s residence but cannot thoroughly inspect the scene due to ongoing security risks.¹⁵

4. *Id.* ¶ 52.

5. *Id.* ¶ 54.

6. *Id.*

7. *Id.* ¶ 55.

8. Cruz Sánchez v. Peru, Report on Merits, ¶ 58.

9. *Id.*

10. *Id.* ¶ 59.

11. *Id.* ¶¶ 60-61.

12. *Id.* ¶ 62.

13. *Id.* ¶ 65.

14. Cruz Sánchez v. Peru, Report on Merits, ¶ 65

15. *Id.* ¶ 81.

April 23, 1997: A report is published on the identification and removal of bodies.¹⁶ It identifies the alleged victims' bodies lying half a meter apart on the second floor of the home, each with multiple bullet wounds.¹⁷ A reference autopsy of Mr. Cruz Sánchez reveals that he had a single gunshot wound to the right side of his head.¹⁸ The special military judge and prosecutor arrive at the scene and order the bodies of the MRTA members be transferred to the Central Hospital of the National Police and autopsied by National Police Medical Commander Mr. Herbert Ángeles Villa Nueva.¹⁹

April 30, 1997: The State's armed forces publish a report on *Operation Chavín de Huántar*.²⁰

2000: Relatives of some of the MRTA members who perished during the operation lodge a complaint with the Public Ministry alleging that their relatives were abruptly executed.²¹

February 2001: The Office of the Special Provincial Prosecutor ("OSPP") forwards the preliminary autopsies of the MRTA members to the Central Division of Thanatological and Auxiliary Examinations ("DICETA") and instructs them to investigate whether the autopsies met medical and legal standards in effect at the time.²² Because the DICETA cannot reach a conclusion based on the previous autopsies, the Special Prosecutor orders the bodies be exhumed and analyzed by a group of forensic experts.²³

August 20, 2001: Former First Secretary of the Embassy of Japan in Lima, Mr. Hidetaka Ogura, a hostage during the incident, sends a letter to the Peruvian Judiciary with his testimony regarding three MRTA members, Mr. Pecaros Pedraza, Ms. Meléndez Cueva, and Mr. Cruz Sánchez, on the night of the operation.²⁴ Mr. Ogura states that when he was evacuated from Ambassador Aoki's home on April 22, he saw Mr. Pecaros Pedraza and Ms. Meléndez Cueva surrounded by State

16. *Id.* ¶ 71.

17. *Id.*

18. *Id.* ¶ 79.

19. *Id.* ¶ 82.

20. Cruz Sánchez v. Peru, Report on Merits, ¶ 85.

21. *Id.* ¶ 87.

22. *Id.* ¶ 88.

23. *Id.*

24. *Id.* ¶ 151, fn. 41.

commandos, unarmed.²⁵ Shortly after being escorted from the room, he heard Ms. Meléndez Cueva pleading with the commandos not to kill them.²⁶ He further states that after being evacuated and taken to a group of former hostages, he saw Mr. Cruz Sánchez alive with his hands bound behind his back in the custody of the Peruvian police.²⁷ He later saw a soldier take Mr. Cruz Sánchez through the tunnel leading to the ambassador's home.²⁸

2001: The Institute of Forensic Medicine of Peru conducts autopsies of the bodies and finds that Mr. Pecaros Pedraza has nine gunshot wounds (six to the face and thorax), while Ms. Meléndez Cueva has fourteen (seven to the head and one to both the throat and thorax).²⁹

May 24, 2002: The OSPP files criminal charges against several individuals ("defendants") for the homicide of the alleged victims, and decides not to begin criminal proceedings for the deaths of the other MRTA members.³⁰

May 29, 2002: The Court Martial opens an investigation against the military personnel who took part in the operation.³¹

June 11, 2002: The Third Criminal Chamber of the Superior Court of Justice ("Third Criminal Chamber") issues restricted summons against the defendants.³² The Third Criminal Chamber also determined to not initiate proceedings against three persons for crimes committed against the State, namely "obstruction of justice by concealing evidence."³³

25. *Id.* ¶ 75.

26. Cruz Sánchez v. Peru, Report on Merits, ¶ 75.

27. *Id.*

28. *Id.*

29. *Id.* ¶ 73. The Institute also conducted autopsies of the commandos and hostages who died during the operation. *Id.* ¶ 80.

30. *Id.* ¶ 91. The Criminal Prosecutor filed criminal charges against: Mr. Vladimiro Montesinos Torres, Mr. Nicolás de Bari Hermoza Ríos, Mr. Roberto Edmundo Huamán Ascurra, Mr. Augusto Jaime Patiño, Mr. José Williams Zapata, Mr. Luis Alatriza Rodríguez, Mr. Carlos Tello Aliaga, Mr. Hugo Víctor Robles del Castillo, Mr. Víctor Hugo Sánchez Morales, Mr. Jesús Zamudio Aliaga, Mr. Raúl Huaracaya Lovón, Mr. Walter Martín Becerra Noblecilla, Mr. José Alvarado Díaz, Mr. Manuel Antonio Paz Ramos, Mr. Jorge Félix Díaz, Mr. Juan Carlos Moral Rojas, Mr. César Rojas Villanueva, Mr. Juan Fernando Vianderas Ottone, Mr. Martín Solari de la Fuente and Mr. Herbert Danilo Ángeles Villanueva.

31. *Id.* ¶ 97.

32. Cruz Sánchez v. Peru, Report on Merits, ¶ 95.

33. *Id.* The parties referred to in the appeal are: Mr. Fernando Vianderas Ottone, Mr. Martín Solari de la Fuente and Mr. Herbert Danilo Ángeles Villanueva.

July 11, 2002: Mr. Edgar Odón Cruz Acuña, a relative of Mr. Cruz Sánchez, enters the suit as a civil party and appeals both the June 11, 2002 decision to issue restricted summons and the prosecutor’s decision to not press obstruction of justice charges.³⁴ The OSPP appeals for these reasons as well.³⁵

August 16, 2002: The Transitory Criminal Law Chamber of the Supreme Court of Justice (“Transitory Criminal Law Chamber”) settles a jurisdictional dispute between the Supreme Council of Military Justice (“Supreme Council”) and the Supreme Court of Justice.³⁶ The Transitory Criminal Law Chamber concludes that the Supreme Council has military jurisdiction over criminal charges brought against military personnel involved in the operation, while the Supreme Court of Justice has civilian jurisdiction over any non-military personnel who were charged.³⁷

September 4, 2002: The mother of Mr. Pecaros Pedraza, Ms. Nemisa Pedraza Chávez, enters the suit as a civil party.³⁸

April 2, 2003: The Special Criminal Chamber of the Superior Court of Justice in Lima (“Special Criminal Chamber”) overturns the June 11, 2002 decision to not investigate criminal allegations of obstruction of justice and concealing evidence against the defendants noted in the appeal.³⁹

April 14, 2003: The OSPP finds defendants Mr. Montesinos Torres, Mr. de Bari Hermoza Ríos and Mr. Huamán Acurra criminally responsible for the qualified homicide of Mr. Pedraza and Ms. Meléndez Cueva.⁴⁰ The OSPP also finds that the defendants and Mr. Jesús Zamudio Aliaga are criminally responsible for the qualified homicide of Mr. Cruz Sánchez.⁴¹

34. *Id.* ¶ 96.

35. *Id.*

36. *Id.* ¶ 98.

37. *Id.*

38. Cruz Sánchez v. Peru, Report on Merits, ¶ 97.

39. *Id.* ¶ 103. The defendants listed are: Mr. Vianderas Ottone, Mr. Solari de la Fuente and Mr. Ángeles Villanueva.

40. *Id.* ¶ 104.

41. *Id.*

April 30, 2003: The Special Criminal Chamber issues a restricted summons against the defendants in the overturned appeal from April 2, 2003.⁴²

August 4, 2003: The Office of the Attorney General charges President Fujimori with the qualified homicide of the alleged victims.⁴³

August 12, 2003: The Special Criminal Chamber joins the cases between various defendants involved in the April 22, 1997 operation and the following events.⁴⁴

October 3, 2003: Pursuant to the civil party's petition, the Court found the State to have third-party liability in the civilian jurisdiction.⁴⁵

October 15, 2003: The Court Martial dismisses the criminal charges against the military personnel, finding that they acted within the confines of their duties and with the goal of protecting human life.⁴⁶

November 8-9, 2003: President Fujimori promotes two of the newly acquitted military personnel, Brigadier General Williams Zapata and commando Manuel Antonio Paz Ramos, to the ranks of Major General and Major, respectively.⁴⁷

April 5, 2004: The Supreme Council approves the War Chamber of the Military Tribunal's order to dismiss the case due to lack of evidence, effectively closing the case.⁴⁸

September 23, 2004: The Supreme Council issues a ruling to close the case, conclusively closing the case as the State's judicial system does not provide a method to appeal the Supreme Council's decisions.⁴⁹

March 21, 2005: The First Special Criminal Chamber of the Superior Court of Justice of Lima requests the Criminal Chamber of the Supreme

42. *Id.*

43. *Id.* ¶ 105.

44. Cruz Sánchez v. Peru, Report on Merits, ¶ 103. The Special Criminal Chamber joined the case of Mr. Vianderas Ottone, Mr. Solari de la Fuente and Mr. Ángeles Villanueva to the case of Mr. Montesinos Torres et al.

45. *Id.* ¶ 106.

46. *Id.* ¶ 99.

47. *Id.* ¶ 100.

48. *Id.* ¶ 101.

49. *Id.* ¶ 102.

Court of the Republic to determine whether they should still take on the case now that the detainees were released.⁵⁰

August 21, 2006: The Third Criminal Chamber acquits Mr. Juan Fernando Vianderas Ottone and Mr. Martín Fortunato Luis Solari de la Fuente for the crime of concealing evidence as the statute of limitations for the crime has lapsed.⁵¹

September 22, 2006: The Office of the Third Supreme Criminal Prosecutor indicts Mr. Vladimiro Montesinos Torres, Mr. Nicolás de Bari Hermoza Ríos, and Mr. Roberto Edmundo Huamán Ascurra for the qualified homicide of the Mr. Pedraza and Mr. Meléndez Cueva.⁵² It also charges these defendants and Mr. Jesús Zamudio Aliaga for the qualified homicide of Mr. Cruz Sánchez.⁵³

June 12, 2007: The Office of the Attorney General files criminal charges against President Fujimori and Mr. Manuel Tullume González, for crimes committed the alleged victims.⁵⁴

July 16, 2007: The Third Special Criminal Court of Lima begins its investigation of President Fujimori and finds no grounds to investigate Mr. Tullume González.⁵⁵

August 1, 2007: The Office of the Attorney General appeals the decision not to investigate Mr. Tullume González.⁵⁶

May 18, 2007: Judges José Antonio Neyra Flores, Manuel Carranza Paniagua, and Carlos Manrique Suárez hear the first oral arguments in the case.⁵⁷

April 30, 2008: The Office of the Attorney General requests the order to begin investigations be expanded to assign third-party civil liability to the State.⁵⁸

50. Cruz Sánchez v. Peru, Report on Merits, ¶ 108.

51. *Id.* ¶ 109.

52. *Id.* ¶ 110.

53. *Id.* ¶ 111.

54. *Id.* ¶ 112.

55. *Id.*

56. Cruz Sánchez v. Peru, Report on Merits, ¶ 112.

57. *Id.* ¶113. Judges Carlos Augusto Manrique Suárez and José Antonio Neyra Flores are removed from the bench in 2009 and 2010 respectively.

58. *Id.* 110.

July 23, 2009: The Full Council decides to not restore Judge Carlos Augusto Manrique Suárez to his previously held position.⁵⁹

August 31, 2009: Judge Manrique Suárez appeals the reinstatement decision.⁶⁰

September 30, 2009: The State rejects Judge Manrique Suárez appeal.⁶¹

November 6, 2009: The Association for Human Rights (*Asociación Pro Derechos Humanos*) (“APRODEH”) receives notification of the right to a re-trial in the civil case.⁶²

January 7, 2010: The Third Special Criminal Chamber sets the date for the re-trial as March 19, 2010.⁶³

B. Other Relevant Facts

[NONE]

II. PROCEDURAL HISTORY

A. Before the Commission

February 3, 2003: Mr. Juan Miguel Jugo Rivera, representing the Association for Human Rights (*Asociación Pro Derechos Humanos*), as well as Mr. Edgar Cruz Acuña and Mr. Herma Luz Cueva Torrez (“Petitioners”) submit a complaint to the Commission alleging that Peru executed the alleged victims.⁶⁴

February 27, 2004: The Commission issues a report on admissibility.⁶⁵

October 25, 2004: Petitioners report to the Commission that several defendants in a civil-action surrounding the events in question have

59. *Id.* ¶ 114.

60. *Id.*

61. *Id.*

62. Cruz Sánchez v. Peru, Report on Merits, ¶ 115.

63. *Id.* ¶ 116.

64. *Id.* ¶ 1.

65. Cruz Sánchez et al. v. Peru, Report on Admissibility, Report No. 13/04, Inter-Am. Comm'n H.R., Case No. 12.444, (Feb. 27, 2004).

been released from State custody due to an inability to convict the defendants within a lawful period of time.⁶⁶

January 28, 2005: The Petitioners name the Center for Justice and International Law (hereinafter “CEJIL”) co-petitioners.⁶⁷

March 31, 2011: The Commission approves Reports on the Merits No. 66/10.⁶⁸ The Commission determines that the State violated Articles 2 (Obligation to Give Domestic Legal Effect to Rights), 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention.⁶⁹ The Commission recommended that the State: (1) make material and moral reparations; (2) impartially and effectively conduct an investigation into the human rights violations, and, within a reasonable time, identify the perpetrators and planners of the violations; (3) take all necessary criminal, administrative, and disciplinary measures against the State officials who contributed to the impunity and denial of justice in this case, and; (4) adopt all necessary measures that would prevent future similar instances, including implementing military human rights programs in training schools.⁷⁰

B. Before the Court

December 13, 2011: The Commission submits the case to the Court after the State fails to adopt its recommendations.⁷¹

April 24, 2012: The victims’ representatives request assistance from the Victim’s Legal Assistance Fund and reparations and reimbursements for costs and expenses from the State.⁷²

66. Cruz Sánchez v. Peru, Report on Merits, ¶ 9.

67. *Id.* ¶ 10.

68. *See id.*

69. *Id.* ¶ 228.

70. *Id.* “Recommendations” ¶ 1-4.

71. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C), ¶ 1 (Apr. 17, 2015).

72. *Id.* ¶ 5.

August 17, 2012: The State submits six preliminary objections.⁷³ The State also submits a partial acknowledgement of international responsibility.⁷⁴

August 28, 2012: The President of the Court grants the victims' request for assistance from the Victim's Legal Assistance Fund.⁷⁵

November 6, 2013: The President of the Court orders a Court representative to travel to the State to verify the facts of the case, and to determine whether the State's reconstruction of events is correct.⁷⁶ The Court also requests the State to submit records pertaining to the criminal proceedings, from both the civil courts and military courts, related to this case.⁷⁷

December 2 and 16, 2013: The State submits its records of criminal proceedings relating to this case from both the military courts and civilian courts, as requested by the Court on November 6, 2013.⁷⁸

January 24, 2014: A Court representative conducts the investigation ordered on November 6, 2013.⁷⁹

February 3 and 4, 2014: The Court hosts the public hearing at its headquarters wherein oral arguments are presented by both parties.⁸⁰

March 20, 2014: The Court notifies the State of their disbursement of funds from the Victim's Assistance Fund.⁸¹

April 15, 2015: The Court begins deliberations on this case.⁸²

1. Violations Alleged by Commission⁸³

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

73. *Id.* ¶ 6.

74. *Id.* ¶¶ 8, 18.

75. *Id.* ¶ 7.

76. *Id.* ¶ 9.

77. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 10.

78. *Id.*

79. *Id.* ¶ 9.

80. *Id.* ¶¶ 11-12.

81. *Id.* ¶ 15.

82. *Id.* ¶ 16.

83. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(c).

Article 5(1) (Right to Physical, Mental, and Moral Integrity)
 Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)
 Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)
 Article 25(1) (Right of Recourse Before a Competent Court)
all in relation to:
 Article 1(1) (Obligation of Non-Discrimination)
 Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸⁴

Same Violations Alleged by Commission, plus:

Article 8 (Right to a Fair Trial)
 Article 13 (Freedom of Thought and Expression)
 Article 25 (Right to Judicial Protection)
all in relation to:
 Article 1.1 (Obligation of Non-Discrimination)

February 3 and 4, 2013: Mr. Antero Flores Aráoz Esparza submits several books, which document the events of the hostage crisis, to the Court as *amicus curiae*.⁸⁵ The Court later determines several of these documents are inadmissible due to being extemporaneous.⁸⁶

III. MERITS

A. Composition of the Court⁸⁷

Humberto Antonio Sierra Porto, President
 Roberto F. Caldas, Vice President
 Manuel E. Ventura Robles, Judge
 Alberto Pérez Pérez, Judge
 Eduardo Vio Grossi, Judge
 Eduardo Ferrer MacGregor Poisot, Judge

84. *Id.* ¶ 5.

85. *Id.* ¶ 12.

86. *Id.*

87. *Id.* ¶ 1. In accordance with Article 19.1 of the Rules of the Court, Judge Diego García-Sayán, a Peruvian national, recused himself from the hearing, deliberation and judgement of this case.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

April 17, 2015: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁸⁸

The Court ruled with five votes to one to reject the State's six preliminary objections⁸⁹ because:

The Court recognized the Commission's decision to hear the case before domestic remedies had been exhausted was appropriate, as those remedies were futile.⁹⁰ The Court dismissed the State's argument that the Commission was in error when deciding that the case was admissible, and noted that such decisions are necessary for the advancement of justice.⁹¹ The Court refuted the State's argument that the Commission could not hear cases which are still being disputed at the domestic level by noting that the Convention provides for exceptions to this rule in certain circumstances.⁹² Ultimately, the Court concluded that the State failed to show that the decision of the Commission violated their right to defense, but instead only displayed a dissatisfaction with the Commission's decision.⁹³ For these reasons, the Court rejected the State's six preliminary objections.⁹⁴

The Court decided with five votes to one to accept the State's partial acknowledgment of international responsibility⁹⁵ because:

The State's admission is given full legal effect in accordance with Article 46 of the Convention.⁹⁶ Furthermore, the Court stated that the State's previous admission implies a complete acceptance of the Court's jurisdiction, and as such the State cannot raise the argument that the

88. *Id.*

89. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 1.

90. *Id.* ¶ 41.

91. *Id.* ¶¶ 42-43.

92. *Id.* ¶ 52.

93. *Id.* ¶ 59.

94. *Id.* ¶ 69.

95. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

96. *Id.* ¶ 24.

*Court does not have jurisdiction over this case because domestic remedies have not yet been exhausted by the petitioners.*⁹⁷

The Court found with five votes to one that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Cruz Sánchez,⁹⁸ because:

*The Court found that Mr. Cruz Sánchez was unarmed and in custody of the State at the time of his death.*⁹⁹ *The Court noted that unlike other MRTA members who were killed during the operation, Mr. Cruz Sánchez had very few wounds, with his autopsy showing only two gunshot wounds as opposed to the normal amount of five or more.*¹⁰⁰ *The Court interprets this to mean that it is less likely he died while in active combat.*¹⁰¹ *The Court further cast doubt on the State's argument that Cruz Sánchez was killed after being taken into custody because he had a grenade in his hand*¹⁰² *Once being taken into custody, Mr. Cruz Sánchez's hands would have been bound behind his back, making it implausible for him to arm himself with a grenade.*¹⁰³ *In the event he was able to arm himself, it is even more unlikely that his body would still be holding the grenade after being shot twice.*¹⁰⁴

*The Court ultimately inferred that the State should have afforded Mr. Cruz Sánchez all of the protections associated with hors de combat after it took him into custody.*¹⁰⁵ *Specifically, the State should have afforded Mr. Cruz Sánchez rights including but not limited to: (1) humane treatment; (2) respect; and (3) a guarantee of rights in accordance with Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention.*¹⁰⁶ *The Court further elaborated that the State bore the burden of proving a credible alternative scenario of Mr. Cruz Sánchez's death while in their custody, and the State failed to meet this*

97. *Id.* ¶ 27.

98. *Id.* "Operative Paragraphs" ¶ 3.

99. *Id.* ¶¶ 313-314.

100. *Id.* ¶ 307.

101. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 307.

102. *Id.* ¶ 315.

103. *Id.*

104. *Id.*

105. *Id.* ¶ 316.

106. *Id.*

burden.¹⁰⁷ For these reasons the Court ruled that the State arbitrarily deprived Mr. Cruz Sánchez of his life, and consequently violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention to his detriment.¹⁰⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right to Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the next of kin of Mr. Cruz Sánchez, Ms. Meléndez Cueva and Mr. Pecaros Pedraza,¹⁰⁹ because:

The State made several mistakes in the handling of evidence during the investigation.¹¹⁰ The State conducted ineffective autopsies, failed to diligently investigate, failed to reach a conclusion within a reasonable time, and failed to prove that minimum standards of care were met to locate an accused person amongst other reasons.¹¹¹

The Court determined what general duties of investigation the State should have legally afforded regarding the alleged victims' deaths, as well as more specific concerns that arose regarding the investigations of particular victims.¹¹² The Court took into account the history of the investigations and complaints regarding the victims, the arguments presented before the Commission, and the Commission's own decision.¹¹³

General Considerations

The Court recognized that States owe their citizens a duty to provide effective judicial remedies for human rights violations which conform to international standards of due process.¹¹⁴ This duty imposes several affirmative duties for the State, such as an obligation to conduct unbiased and effective investigations into deaths that result from the State's actions and to ensure the deaths were not arbitrary deprivations

107. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 317.

108. *Id.* ¶ 319.

109. *Id.* "Operative Paragraphs" ¶ 4.

110. *Id.*

111. *Id.*

112. *Id.* ¶¶ 344-45.

113. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 344-345.

114. *Id.* ¶ 346.

of life.¹¹⁵ The Court recognized that the State's duty to investigate the deaths of the alleged victims is not negated by the circumstances in which the deaths took place.¹¹⁶ The Court also recognized that the large gap in time between the deaths and the human rights allegations creates some limitations on the State's ability to adequately investigate.¹¹⁷ The Court noted that the State itself admitted responsibility for failing to resolve the criminal proceedings for the cases of the alleged victims within a reasonable amount of time.¹¹⁸ This, in conjunction with the fact that the State has yet to reach a conclusive decision regarding the case of Cruz Sánchez after almost two decades, led the Court to hold that the State violated 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention to the detriment of the alleged victims.¹¹⁹

Mistakes in Handling of Evidence

The Court recognized that States have a duty to conduct preliminary investigations in accordance with certain international standards, the bare minimum of which is to preserve the evidence.¹²⁰ The Court further recognized that States must perform this duty immediately or at the earliest possible opportunity.¹²¹ The Court concluded that the State failed to meet the minimum standards of diligence in their investigation of evidence at scene of the crime, because the State made several mistakes including: (1) a failure to photograph evidence in its natural state; (2) moving pieces of evidence and then photographing it after it had been moved; (3) failure to take fingerprint and forensic samples from weapons and other evidence alleged to be present at during the operation; and (4) a failure to perform adequate autopsies on the bodies after they had been removed from the premises.¹²²

Appropriateness of Military Jurisdiction

The Court acknowledged that the State did not know of the execution of Mr. Cruz Sánchez at the time of the relevant events, and as such did not

115. *Id.* ¶¶ 347-48.

116. *Id.* ¶ 350.

117. *Id.*

118. *Id.* ¶ 353.

119. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 353.

120. *Id.* ¶¶ 366-67.

121. *Id.* ¶ 368.

122. *Id.* ¶¶ 370-74.

take his case into consideration with regards to this issue.¹²³ The Court established that military courts have jurisdiction only over issues of international law which have potential to somehow harm the judicial interests of the military.¹²⁴ All other instances of human rights violations are to be prosecuted in accordance with the State's ordinary means of justice.¹²⁵ The Court emphasizes that the right to be heard by the appropriate judge is important for providing citizens with due process and allowing them access to effective justice.¹²⁶ The Court ultimately concluded that the State violated Article 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) when it granted the military courts jurisdiction over the victims' cases.¹²⁷

Utilization of All Effective Means to Investigate

The Court recognized that States owe their citizens a duty to use all available means to conduct an effective and impartial investigation in pursuit of the truth and the prosecution of those who have violated international law.¹²⁸ The Court concluded that the State failed to exercise due diligence in their investigation of Mr. Zamudio Aliaga. Specifically, they failed to employ all available effective means to find Mr. Zamudio Alaiga and bring him before the Court.¹²⁹ The Court ultimately left the investigation of former president Mr. Fujimori to the appropriate domestic authorities and noted that they will not take these facts into consideration when deciding on the other issues of this case.¹³⁰

Right to Truth

The Court recognized that the right of victims' families to know the truth emerges from the State's duty to clarify violations and responsibilities.¹³¹ The Court noted that in the case of Mr. Cruz Sánchez, the State failed to find the truth of the events surrounding his death after eighteen years.¹³² The Court concluded that a ruling on the

123. *Id.* ¶ 396.

124. *Id.* ¶ 398.

125. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 398.

126. *Id.*

127. *Id.* ¶ 404.

128. *Id.* ¶ 421.

129. *Id.* ¶ 423.

130. *Id.* ¶ 424.

131. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 428.

132. *Id.* ¶ 429.

*violation of the right to know the truth is not necessary due to the previously declared violations already discussed.*¹³³

The Court did not specifically discuss violations of Article 25(1) (Right to Recourse Before a Competent Court); nevertheless, the Court found violations of this Article.¹³⁴ For these reasons the Court ultimately held that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right to Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the next of kin of the victims.¹³⁵

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Cruz Acuña,¹³⁶ because:

The Court recognized that the families of the victims of human rights violations by States may in turn declare that the State violated their right to mental and moral integrity, because of the pain that they endured in response to the violations against their family members.¹³⁷ The Court further elaborated that this is especially true in cases where the State arbitrarily or extra-judicially killed the petitioner's immediate family member.¹³⁸ The Court also explained that in the case of non-immediate family members, an argument may still be raised that the bond between the relatives was so strong that the violations still resulted in damage to their integrity, and to decide this several factors must be taken into account.¹³⁹

The Court found that: Mr. Cruz Acuña was sufficiently close to Mr. Cruz Sánchez; that he did not claim Mr. Cruz Sánchez's body out of fear of retaliation from the State; that he willingly participated in the investigation into the death of Mr. Cruz Sánchez; and that he became a

133. *Id.* ¶ 430.

134. *Id.* ¶¶ 500-504.

135. *Id.* ¶ 431.

136. *Id.* "Operative Paragraphs" ¶ 5.

137. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 443.

138. *Id.* ¶ 444.

139. *Id.* ¶ 445. The factors are: (i) the existence of close family ties; (ii) the particular circumstances of the relationship with the victim; (iii) how the family became involved in the pursuit of justice; (iv) the response by the State to the efforts; (v) the context of a regime that prevented free access to justice, and (vi) the continuing uncertainty in which the relatives of the victim as a result of ignorance of their whereabouts were involved.

*civil party in proceedings in an attempt to achieve justice for Mr. Cruz Sánchez.*¹⁴⁰ *For these reasons the Court ruled that the State violated Mr. Cruz Acuña's Article 5(1) (Right to Physical, Mental, and Moral Integrity) right.*¹⁴¹

The Court found that the State did not violate:

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right to Recourse Before a Competent Court) of the Convention, to the detriment of the alleged victims,¹⁴² because:

*The Court found that the decision of the Supreme Court to give the military courts jurisdiction over these alleged human rights violations was a single instance and not indicative of Peru's laws.*¹⁴³ *The Court established that a State violates Article 2 (Obligation to Give Domestic Legal Effect to Rights) when the State creates domestic laws and applies them in such a way that they violate the Convention.*¹⁴⁴ *Ultimately, the Court decided that because the inadequacy of the military court to hear the case had already been established in a previous Article violation, and because the ruling of the Supreme Court was a unique situation and not a broad interpretation of Peruvian legislation, the State did not violate Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.*¹⁴⁵

The Court found that there was insufficient evidence to conclude whether the State violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Meléndez Cueva and Mr. Pecaros Pedraza,¹⁴⁶ because:

140. *Id.* ¶¶ 448-49.

141. *Id.* ¶ 450.

142. *Id.* "Operative Paragraphs" ¶ 6.

143. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 6.

144. *Id.* ¶ 411.

145. *Id.* ¶¶ 413-415.

146. *Id.* "Operative Paragraphs" ¶ 7.

*The Court did not find conclusive evidence that the victims did not die while in combat.*¹⁴⁷ *The events leading up to the deaths of Ms. Meléndez Cueva and Mr. Pecaros Pedraza are unclear and the subject of conflicting evidentiary accounts.*¹⁴⁸ *The Court noted that Ms. Meléndez Cueva and Mr. Pecaros Pedraza's deaths both occurred during the ongoing rescue operation, unlike Mr. Cruz Sánchez, who was confirmed to have died after the operation concluded.*¹⁴⁹ *Furthermore, the Court noted that the only true evidence pointing towards a situation in which the alleged victims died after having ceased hostilities was the sole and uncorroborated testimony of Mr. Ogura, while other evidence, such as the number of bullet wounds in the bodies, pointed towards the likelihood that the alleged victims died in combat.*¹⁵⁰ *The Peruvian Supreme Court also concluded that the alleged victims died while engaged in combat, and without sufficient reason to rule to the contrary the Court concluded that it had insufficient evidence to determine whether the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the Convention in this case.*¹⁵¹

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi primarily disagreed with the Court's decision to dismiss the State's preliminary objections regarding the failure to exhaust domestic remedies.¹⁵² He found this rule to be a deliberate check on the power of intergovernmental organizations such as the Commission and the Court.¹⁵³ He disagreed with the Court for several reasons: (1) the petitioners should have exhausted domestic remedies at the time they filed their claim to the Commission rather than during the admissibility phase; (2) the Commission used the wrong test when it determined whether the complaint was appropriately filed, as opposed to whether all domestic legal remedies had been exhausted; and (3) by accepting a case which is still being heard by the domestic courts of a State, the Court is

147. *Id.* ¶¶ 341-343.

148. *Id.* ¶ 321.

149. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 339.

150. *Id.* ¶ 340.

151. *Id.* ¶¶ 341-43.

152. *See generally* Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) 1 (Apr. 17, 2015).

153. *Id.* ¶ 4.

contradicting its very purpose, which is to act as a balancing agent between the protection of human rights and a respect for the sovereignty of democratic nations.¹⁵⁴

2. Partially Dissenting Opinion of Judge Alberto Pérez Pérez

In a separate opinion, Judge Pérez Pérez dissented to the Court's decision to not award non-pecuniary damages to Mr. Cruz Sánchez's family because he does not believe the Court should depart from the normal practice of granting non-pecuniary damages for pain and suffering the State's violations caused.¹⁵⁵

3. Concurring Opinion of Judge Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Mac-Gregor Poisot stated that the Court should have awarded damages to the families of the victims for the suffering they experienced as a result of the State's violations.¹⁵⁶ He noted that because this case's circumstances render *restitutio in integrum* impossible, awarding damages is necessary to provide a full restitution.¹⁵⁷ Special emphasis was given to the seriousness of the acts the State committed which directly affected the family members of the victims, such as the burial of the bodies of Ms. Meléndez Cueva and Mr. Pecaros Pedraza without notifying their families.¹⁵⁸ Finally, he stated that the victim's unlawful acts should not prevent their next of kin from receiving due reparations, and that denying these reparations is discriminatory in light of the Court's past decisions.¹⁵⁹

IV. REPARATIONS

The Court ruled with four votes in favor and two against that the judgment is a form of *per se* reparation.¹⁶⁰

154. *Id.* ¶¶ 18-19.

155. *See generally* Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partial Dissent of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) 1 (Apr. 17, 2015).

156. Cruz Sánchez et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 281, ¶ 18 (Apr. 17, 2015).

157. *Id.* ¶ 19.

158. *Id.* ¶¶ 21-21.

159. *Id.* ¶ 23.

160. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 8.

The Court ruled with five votes in favor and one against that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Prosecution of Parties Responsible

The Court ordered the State to research and conduct criminal proceedings to identify and prosecute all parties potentially responsible for Mr. Cruz Sánchez's execution.¹⁶¹

2. Provide Free Health Services

The Court ordered that the State provide free mental health services to the victims.¹⁶²

3. Publish the Decision

The Court ordered the State to publish the official summary of the Court's judgment in a nationally circulated newspaper of their choice and to publish the decision in its entirety on a national website for at least one year after the date of the decision.¹⁶³

4. Progress Report

The Court ordered the State to submit a report detailing the measures it has taken to comply with the Court's orders.¹⁶⁴

5. Continued Monitoring

The Court ordered that it will continue monitoring the State until it has fully complied with the orders.¹⁶⁵

B. Compensation

The Court awarded the following amounts:

161. *Id.* Operative Paragraphs" ¶ 9.

162. *Id.* "Operative Paragraphs" ¶ 10.

163. *Id.* "Operative Paragraphs" ¶ 11.

164. *Id.* "Operative Paragraphs" ¶ 14.

165. *Id.* "Operative Paragraphs" ¶ 15.

1. Pecuniary Damages

The Court did not find it necessary to make a ruling on pecuniary damages.¹⁶⁶

2. Non-Pecuniary Damages

The Court did not find it necessary to make a ruling on non-pecuniary damages.¹⁶⁷

3. Costs and Expenses¹⁶⁸

The Court awarded \$10,000 to APRODEH and \$20,000 to CEJIL for costs and expenses incurred as a result of trial.¹⁶⁹ The Court ordered the State to pay these amounts directly to the organizations.¹⁷⁰ Additionally, the Court ordered the State to pay \$1,685.36 to the Victim's Legal Assistance Fund for expenses incurred.¹⁷¹

4. Total Compensation (including Costs and Expenses ordered):

\$ 31,685.36

C. Deadlines

The State must publish the Court's decision within six months of notice of the judgment.¹⁷²

The State must submit a report detailing its progress within one year of notice of the judgment.¹⁷³

The State must pay the costs and expenses awarded to both APRODEH and CEJIL within one year of notice of the judgment.¹⁷⁴

The State must pay the amount awarded to the Victim's Legal Assistance Fund within ninety days of notice of the judgment.¹⁷⁵

166. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 478.

167. *Id.* ¶ 483.

168. *Id.* "Operative Paragraphs" ¶¶ 12-13.

169. *Id.* ¶ 492.

170. *Id.* ¶ 492.

171. *Id.* ¶ 495.

172. Cruz Sánchez v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 466.

173. *Id.* "Operative Paragraphs" ¶ 14.

174. *Id.* ¶ 496.

175. *Id.* ¶ 495.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Cruz Sánchez v. Peru, Preliminary Objections, Fund, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. \(ser. C\) \(Apr. 17, 2015\)](#)

[Cruz Sánchez v. Peru, Preliminary Objections, Fund, Reparations, and Costs, Partially Dissenting Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. \(ser. C\) \(Apr. 17, 2015\)](#)

[Cruz Sánchez v. Peru, Preliminary Objections, Fund, Reparations, and Costs, Dissenting Opinion of Judge Eduardo Grossi, Inter-Am. Ct. H.R. \(ser. C\) \(Apr. 17, 2015\).](#)

[Cruz Sánchez v. Peru, Preliminary Objections, Fund, Reparations, and Costs, Partially Seperate Opinion of Judge Eduardo Ferrer MacGregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) \(Apr. 17, 2015\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Cruz Sánchez v. Peru, Admissibility Report, Report No. 13/04, Inter-Am. Comm'n H.R., Case No. 12.444 \(Feb. 27, 2004\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Cruz Sánchez v. Peru, Report on Merits, Report No. 66/10, Inter-Am. Comm'n H.R., Case No. 12.444 \(Mar. 31, 2011\).](#)

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[None]